Institutionalizing Inequality: The WTO Agreement on Agriculture, Food Security, and Developing Countries

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I. INTRODUCTION

> "No one can be without sin who does not at least daily affirm his belief in the profound beneficence of free market forces."[1]
>
> "[R]ural development programs and development planning in general have contributed not only to growing pauperization of rural people, but also to aggravated problems of malnutrition and hunger. . . . This type of management of life actually became a theatre of death (most strikingly in the case of the African famine), as increased production of food resulted, through a perverse shift, in more hunger."[2]

On November 14, 2001, trade ministers from 142 World Trade Organization (WTO) member nations gathered in the ballroom of the Sheraton Hotel in Doha, Qatar, and approved a declaration announcing a new round of global trade negotiations.[3] The trade ministers reaffirmed their belief in the role of free trade in promoting economic development and alleviating poverty, and pledged to ensure that "the increased opportunities and welfare gains that the multilateral trading system generates" would be extended to all.[4]

Meanwhile, thousands of miles away, in the coffee-growing regions of Guatemala, Mexico, and Colombia, small farmers experienced first-hand the inequities of the global trading system. With worldwide sales of $55 billion, coffee is the second-most-traded commodity after petroleum.[5] The coffee trade is dominated by a handful of multinational corporations that purchase coffee beans from small producers in nearly 50 developing countries.[6] In 2001,

1. John Kenneth Galbraith, Agricultural Policy: Ideology, Theology and Reality Over the Years, Speech to National Governor's Conference at Harvard University (July 27, 1987), *quoted in* Kevin Watkins, *Free Trade and Farm Fallacies: From the Uruguay Round to the World Food Summit*, 26 THE ECOLOGIST 244 (1996).

2. Arturo Escobar, *Planning*, *in* THE DEVELOPMENT DICTIONARY: A GUIDE TO KNOWLEDGE AS POWER 141 (Wolfgang Sachs ed., 1992).

3. Carter Dougherty, *WTO to Seek More Open Markets; Qatar Talks End With 3-Year Pledge*, THE WASHINGTON TIMES, Nov. 15, 2001, at C9; Joseph Kahn, *Nations Back Freer Trade, Hoping to Aid Global Growth*, N.Y. TIMES, Nov. 15, 2001, at A12.

4. Doha WTO Ministerial 2001: Ministerial Declaratio, ¶¶ 1-2, (Nov. 14, 2001), *at* http://www.wto.org/english/thewto_e/min01_e/mindecl_e.htm [hereinafter Ministerial Declaration].

5. Elizabeth Neuffer, *The Shadows of Globalization: The Coffee Connection; Thousands of Miles Form [sic] Boston's Breakfast Tables and Fast-Food Restaurants, at the End of a Global Trade Network, Guatemala's Farmers are Barely Scraping By*, BOSTON GLOBE, July 19, 2001, at A1.

6. *Id.* Four multinational corporations dominate the industry. Proctor and Gamble,

coffee prices dropped to an eight-year low due to over-production of coffee beans,[7] generating enormous profits for multinational corporations and increasing poverty and misery in developing countries.[8] In Guatemala, the world's seventh-largest coffee producer, coffee revenues dropped by half in the course of two years, and rural unemployment climbed to 40 percent.[9] In Mexico, the collapse in coffee prices resulted in an exodus of 300,000 coffee farmers from the countryside in search of better economic opportunities.[10] In Colombia, thousands of unemployed coffee farmers flocked to the southern jungles to find work in coca farms and cocaine laboratories, thereby undercutting U.S.-funded drug eradication efforts.[11]

What has gone wrong with the promise of free trade as the promoter of economic prosperity? Why has free trade produced record profits for multinational corporations while increasing rural poverty and fueling social dislocation in developing countries, as illustrated by the coffee trade example?

As the opening quote from John Kenneth Galbraith suggests, free trade has become a modern-day religion and has been enthu-

Philip Morris, Sara Lee, and Nestle represent 60 percent of U.S. sales and 40 percent of worldwide sales. *Id.*

7. *Id.*

8. Robert Collier, *Mourning Coffee; World's Leading Java Companies are Raking in High Profits but Growers Worldwide Face Ruin as Prices Sink to Historic Low*, S.F. CHRON., May 20, 2001, at A1; Steve Crenshaw, *Coffee Prices are Slumping (Not that You Would Know It in Starbucks)*, THE INDEP. (London), May 17, 2001, at 3. In general, the collapse in world coffee prices had little impact on the price paid for coffee by consumers. This is because most of the costs associated with coffee production are not incurred in primary production, but in subsequent activity, such as processing, packaging, transporting, and retailing. BELINDA COOTE, THE TRADE TRAP 66 (1996). Moreover, coffee is traded through many middlemen and may change hands as many as 150 times before it reaches the ultimate consumer. JOHN MADELEY, HUNGRY FOR TRADE: HOW THE POOR PAY FOR FREE TRADE 152 (2000).

9. Collier, *supra* note 8.

10. Neuffer, *supra* note 5, at 2. Fourteen of these coffee farmers died of exposure in the Arizona desert as they attempted to flee to the United States. *Id.*

11. Collier, *supra* note 8. The coffee debacle is merely one example of the economic vulnerability of developing countries that rely on one or two export commodities for the bulk of their export revenues. This dangerous dependence on the export of a handful of primary commodities (such as cotton, tea, coffee, and cocoa) to distant, affluent markets is a product of the colonial and post-colonial division of labor between the core regions of the industrialized world and the non-industrialized periphery. *See* E.M. YOUNG, WORLD HUNGER 41 (1997). While the WTO Agreement on Agriculture did not create the inequitable economic relations between industrialized and developing countries, this article argues that it exacerbates the asymmetries and may limit the options available to developing countries to promote food security.

siastically embraced by both wealthy industrialized countries and by many governments of poor developing countries[12] as the generator of economic growth, development and employment.[13] However, free trade has also been denounced by nongovernmental organizations (NGOs) in developing countries as the tool through which the economic dominance of wealthy, developed countries is institutionalized and maintained.[14]

Nowhere is the tension between the critics and the proponents of the existing multilateral trading system more evident than in matters of agricultural policy.[15] Indeed, agriculture was one of the

12. The terms "developed country" and "developing country" are designed to distinguish the world's most affluent industrialized countries from less economically and politically powerful nations. This distinction is arbitrary and imprecise, and may obscure the divergent interests of large, relatively wealthy developing countries, like China and Brazil, and smaller, less affluent developing countries, like Jamaica and Bangladesh. *See* Carmen G. Gonzalez, *Beyond Eco-Imperialism: An Environmental Justice Critique of Free Trade,* 78 DENV. U. L. REV. 981, 982 n.5 (2001) (discussing the commonalities and differences among developing countries). Nevertheless, the terms "developing country" and "developed country" are routinely used in the international legal system, including U.N. General Assembly declarations, trade agreements, and environmental treaties, to define the roles and obligations of states. *See, e.g.,* Robert E. Lutz, *The Export of Danger: A View from the Developed World,* 20 N.Y.U. J. INT'L. L & POL. 629, 657-59 (1988) (describing differential treatment accorded developing countries under international law); *see also* Daniel Barstow Magraw, *Legal Treatment of Developing Countries: Differential, Contextual, and Absolute Norms,* 1 COLO. J. INT'L ENVTL. L. & POL'Y 72, 73-74 (1990). While this article will refer broadly to developed countries and developing countries, it must be understood that developing countries are highly heterogeneous and that their interests and priorities will not always coincide. For example, Part II(C) *infra* discusses the divergent propositions taken by various developing countries during the negotiation of the WTO Agreement on Agriculture.

13. The WTO Ministerial Declaration adopted in Doha, Qatar, applauds the contribution of the multilateral trading system to growth, development and employment during the past fifty years, and emphasizes the importance of continued trade liberalization to promote recovery, growth and development. *See* Ministerial Declaration, *supra* note 4, at¶. 1. However, as Professor David Driesen points out in a recent article, the voluminous literature addressing liberalized trade and its relationship to other policy areas, such as environmental law, intellectual property, and human rights, rarely includes a precise definition of "free trade." This failure to articulate a normatively attractive and coherent definition of free trade has resulted in doctrinal incoherence in the decisions of GATT/WTO dispute resolution bodies and has made it difficult for proponents of the GATT and related multilateral trade agreements to respond to critics in a persuasive manner. *See* David M. Driesen, *What is Free Trade? The Real Issue Lurking Behind the Trade and Environment Debate,* 41 VA. J. INT'L L. 279 (2001).

14. *See* WALDEN BELLO, DARK VICTORY: THE UNITED STATES AND GLOBAL POVERTY 85 (1999); *see generally* VIEWS FROM THE SOUTH: THE EFFECTS OF GLOBALIZATION AND THE WTO ON THIRD WORLD COUNTRIES (Sarah Anderson ed., 2000).

15. *See* Watkins, *supra* note 1, at 244 (describing how free trade theory is enthusiastically embraced by agricultural ministers from both developed and developing countries, citing as an example the 1996 World Food Summit held in Rome under the auspices of the United

most contentious issues in the recent WTO Ministerial meeting in Qatar and has been one of the most controversial issues in the multilateral trade negotiations for the past fifty years.[16] The controversy stems from the fact that the rules governing agricultural trade, as embodied in the WTO Agreement on Agriculture, are perceived as allowing the United States and the European Union to continue to subsidize agricultural production and to dump surpluses on world markets at artificially depressed prices while requiring developing countries to open up their markets to ruinous and unfair competition from industrialized country producers.[17] This results in the displacement of local food production in developing countries by cheap imported food, increases dependence on food imports, and produces a decline in food self-reliance.[18] In addition, as the coffee debacle illustrates, countries that rely on export revenues to finance the importation of food could face severe dislocation when a drop in the world market price of key exports makes it difficult to purchase imported food.[19]

This article examines the food security[20] implications of the WTO Agreement on Agriculture. It argues that the WTO Agreement on Agriculture systematically favors agricultural producers in industrialized countries at the expense of farmers in developing countries, and discusses ways in which the Agreement may be modified to achieve a more level playing field. The article goes on to address the extent to which realization of the Agreement's stated objective—the creation of a fair and market-oriented agricultural trading system[21]—is likely to promote food security in developing countries.

Nations Food and Agriculture Organization, and critiquing the notion that free trade promises to end world hunger).

16. *See* Dougherty, *supra* note 3.

17. *See* Watkins, *supra* note 1, at 245.

18. *Id.* at 245-46.

19. *See* Celine Charveriat, *Bitter Coffee: How the Poor are Paying for the Slump in Coffee Prices*, Oxfam Policy Paper (May 2001), *at* http://www.oxfam.org.uk/policy/papers/coffee/coffee.htm. For example, in Ethiopia, where coffee production originated, the decline in global coffee prices has resulted in a loss of $300 million in export revenues in the last two years (a figure which represents a fifty percent decline in the country's annual export earnings), and has produced household food shortages. *Id.* at 1, 3-4.

20. This article defines food security as physical and economic access by all people at all times to sufficient, safe and nutritious food to maintain a healthy and active life. Section V of this article discusses the meaning of this term in greater detail.

21. Agreement on Agriculture, April 15, 1994, Preamble, ¶ 2, *at* http://www.wto.org [hereinafter Agreement on Agriculture].

Section II of the article describes the historical context for the WTO Agreement on Agriculture, including the protectionist policies of industrialized countries under the pre-Uruguay Round GATT, the free market reforms adopted by developing countries as a result of World Bank-mandated Structural Adjustment Programs, and the dominant role of the United States and the European Union in the Uruguay Round agriculture negotiations. Section III examines the major provisions of the WTO Agreement on Agriculture, including provisions related to tariffs, market access, and export subsidies. Section IV argues that the WTO Agreement on Agriculture enables industrialized countries to continue to subsidize agricultural production while requiring developing countries to open up their markets to foreign competition. Section V defines food security, discusses the relationship between trade and food security, and analyzes the impact of the WTO Agreement on Agriculture on food security in developing countries. Section VI sets forth the reforms necessary to address inequities in the global trading system for agricultural commodities and to enhance and protect food security in developing countries. The article concludes that leveling the playing field between industrialized and developing countries is necessary, but not sufficient to promote food security. Promotion of food security requires additional trade reforms to provide developing countries with a wide array of tools to ensure access by all people at all times to sufficient, safe and nutritious food.

II. BACKGROUND TO THE WTO AGREEMENT ON AGRICULTURE

On April 14, 1994, trade ministers from more than 100 countries met in Marrakesh, Morocco, and signed "The Final Act Embodying the Results of the Uruguay Round of Multilateral Negotiations."[22] The Final Act was the culmination of the negotiations launched in Punta del Este, Uruguay in September 1986,[23] to amend the 1947 General Agreement on Tariffs and Trade (GATT or 1947 GATT).[24] The Final Act established a World Trade Organization (WTO) to oversee the new multilateral trading system

22. *Over 100 Nations Sign GATT Accord to Cut Barriers to World Trade*, 11 Int'l Trade Rep. (BNA) at 61 (Apr. 20, 1994).

23. *Id.*

24. General Agreement on Tariffs and Trade, Oct. 30, 1947, 61 Stat. A-11, 55 U.N.T.S. 187 [hereinafter GATT or 1947 GATT].

and to administer the substantive agreements negotiated during the Uruguay Round.[25] These agreements pertain to agriculture, sanitary and phytosanitary measures (SPS), textiles and clothing, technical barriers to trade (TBT), trade-related investment measures (TRIMS), anti-dumping, customs valuation, preshipment inspection, rules of origin, import licensing procedures, subsidies and countervailing measures, safeguards, trade in services, and trade-related aspects of intellectual property (TRIPS).[26]

Prior to the Uruguay Round, agricultural commodities were largely exempted from the application of GATT requirements.[27] Developing countries generally taxed the agricultural sector in order to earn badly-needed revenue, whereas industrialized countries utilized a variety of instruments to promote agricultural production, including export subsidies, import tariffs, import quotas, and other non-tariff barriers.[28] The WTO Agreement on Agriculture is significant because it represents the first time since the creation of GATT in 1947 that agricultural commodities have been subject to the multilateral trading rules.[29]

A. Agricultural Policy in Developed Countries under the Pre-Uruguay Round GATT

Under the pre-Uruguay Round GATT, agricultural policy in developed countries was characterized by high levels of protectionism and by a transfer of income from urban consumers and taxpayers to rural farmers and modern agribusiness.[30] These policies

25. WTO, A SUMMARY OF THE FINAL ACT OF THE URUGUAY ROUND *at* http://www.wto.org/english/docs_e/legal_e/ursum_wp.htm (last visited August 20, 2001).

26. *Id.*

27. Sanoussi Bilal, *Agriculture in a Globalising World Economy, in* NEGOTIATING THE FUTURE OF AGRICULTURAL POLICIES; AGRICULTURAL TRADE AND THE MILLENIUM WTO ROUND 1 (Sanoussi Bilal & Pavlos Pezaros eds., 2000); Jeffrey J. Steinle, *The Problem Child of World Trade: Reform School for Agriculture,* 4 MINN. J. GLOBAL TRADE 333, 335 (1995). Paradoxically, the agricultural interest groups that demanded GATT exemptions frequently pressured their respective governments to utilize the GATT dispute resolution mechanism to address agriculture-related trade disputes. From the early 1960s to the late 1980s, over fifty percent of GATT trade disputes involved agriculture. Jon Lauck, *Against the Grain: The North Dakota Wheat Pooling Plan and the Liberalization Trend in World Agricultural Markets,* 8 MINN. J. GLOBAL TRADE 289, 297 (1999); Robert Hudec et al., *A Statistical Profile of GATT Dispute Settlement Cases: 1948-1989,* 2 MINN. J. GLOBAL TRADE 1, 67 (1993).

28. Bilal, *supra* note 27, at 1.

29. *Id.* at 2.

30. THE GATT URUGUAY ROUND: A NEGOTIATING HISTORY (1986-1992) 131 (Terence P.

promoted agricultural production for both the domestic and the international market, ensured an adequate supply of food, and preserved "traditional" agrarian lifestyles.[31] In 1990, for example, total transfers from consumers and taxpayers to farmers in the OECD countries were estimated at approximately $300 billion.[32]

The United States and the European Union adopted a variety of measures to protect and promote agricultural production.[33] These measures conferred an enormous advantage on agricultural producers in industrialized countries vis-à-vis their competitors in developing countries. This section describes the various protectionist instruments used by the U.S. and the E.U. and the exceptions and omissions in the pre-Uruguay Round GATT that facilitated their adoption. In so doing, it lays the groundwork for the discussion of the changes to the agricultural trading rules wrought by the WTO Agreement on Agriculture.

1. Tariffs

Agriculture was almost entirely exempt from the central GATT obligation to limit tariffs on particular goods to a specified maximum ("tariff binding").[34] The absence of an agreement on tariff binding in the agricultural sector is significant because tariff rates for agricultural products have traditionally been much higher than those for manufactured goods.[35] This is a particularly important issue for developing countries that rely on agriculture as a

Stewart ed., 1993); INGOLF VOGELER, THE MYTH OF THE FAMILY FARM 147-94 (1981) (describing federal government transfers to agribusiness via federal tax laws as well as direct subsidies).

31. THE GATT URUGUAY ROUND, *supra* note 30, at 131.

32. ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT (OECD), AGRICULTURAL POLICIES, MARKETS AND TRADE: MONITORING OUTLOOK 1991, 12 (1991).

33. William J. Davey, *The Rules for Agricultural Trade in GATT*, *in* GATT AND TRADE LIBERALIZATION IN AGRICULTURE 3-6 (Masayosi Homna et al. eds., 1993).

34. THE GATT URUGUAY ROUND, *supra* note 30, at 140; *see* GATT, Article II (incorporating by reference country-by-country schedules containing tariff bindings). Only fifty-five percent of agricultural tariffs in developed countries and eighteen percent of tariffs in developing countries were bound under the pre-Uruguay Round GATT. Dale Hathaway & Merlinda Ingco, *Agricultural Liberalization and the Uruguay Round*, *in* THE URUGUAY ROUND AND THE DEVELOPING COUNTRIES 1, World Bank Paper No. 307 (Will Martin & Alan Winters eds., 1995). Tariff barriers remained prohibitively high on many developing country agricultural commodities (such as cereals, fruits and vegetables) that competed with developed country products. CHRISTOPHER STEVENS ET AL., THE WTO AGREEMENT ON AGRICULTURE AND FOOD SECURITY 35 (2000).

35. THE GATT URUGUAY ROUND, *supra* note 30, at 141.

primary source of export revenue because high tariffs have historically been employed by developed countries to limit market access by developing country competitors.[36] However, the nontariff barriers discussed below accounted for an even greater share of agricultural import restrictions in the pre-Uruguay Round period than tariff barriers.[37]

2. Quantitative Restrictions on Agricultural Imports

The pre-Uruguay Round GATT generally prohibited quantitative restrictions, such as import quotas and embargoes.[38] Agricultural products, however, were the subjects of several exemptions from that prohibition.[39] The most important of the agricultural exemptions, which are also the ones most subject to GATT trade disputes, are contained in Article XI:2(c).[40] These exemptions permit import restrictions on agricultural products to the extent that these restrictions are designed (i) to reinforce controls on domestic production or marketing of like or substitutable products, (ii) to facilitate the disposal of temporary surpluses of agricultural products, or (iii) to support domestic efforts to reduce animal production.[41]

However, the Article XI:2 exemptions were not the sole factor

36. *Id.* at 155-56.

37. *Id.* at 141.

38. The general prohibition on quantitative restrictions is contained in GATT Article XI:1. The text of this provision is as follows: "No prohibitions or restrictions other than duties, taxes, or other charges, whether made effective through quotas, import or export licenses or other measures, shall be instituted or maintained by any contracting party on the importation of any product of the territory of any other contracting party or on the exportation or sale for export of any product destined for the territory of any other contracting party."

39. The agricultural exemptions are set forth in GATT Article XI:2. Article XI:2(a) permits temporary export restrictions or prohibitions to relieve critical shortages of foodstuffs or other essential products. Article XI:2(b) permits import and export restrictions and prohibitions necessary to the application of standards or regulations for the grading, classification or marketing of commodities in international trade. Article XI:2(c) is discussed in the text above.

40. *See* Davey, *supra* note 33, at 9-10; *see also* Joseph McMahon, *The Uruguay Round and Agriculture: Charting a New Direction?*, 29 INT'L LAW 411, 412-13 (1995).

41. Article XI:2(c)(i) permits import restrictions in order to support effective restrictions on domestic production or marketing of a like or substitutable product. Article XI:2(c)(ii) permits import restrictions to support domestic policies designed to dispose of temporary surpluses by making them available at below cost prices. Finally, Article XI(2)(c)(iii) permits import restrictions on animal feed to support domestic policies designed to reduce animal production, if domestic feed production is negligible.

that permitted import restrictions to flourish under the pre-Uruguay Round GATT. Another important factor was the United States' successful demand for a waiver of its GATT Article XI obligations.[42] This waiver enabled the United States to impose import quotas that were not connected to domestic production control programs and would otherwise violate Article XI.[43] Furthermore, GATT Article XI does not prohibit the use of many other protectionist devices, such as quotas pursuant to GATT Article XIX (which permits quotas to protect domestic industry against a surge in imports)[44] or price manipulation to achieve quota-like effects.[45] Prices can be manipulated to increase the price of imports relative to domestic production (via tariffs or via variable levies applied in addition to base tariffs) or to decrease the price of domestic goods below the price of imports (via subsidies).[46] The European Union (E.U.), in furtherance of its Common Agricultural Policy (CAP), has imposed substantial levies on agricultural imports in addition to base tariffs in order to ensure that these imports do not compete with E.U. production.[47]

Utilizing the instruments described in the preceding paragraph, the European Union and the United States maintained significant restrictions on the import of agricultural products under the pre-Uruguay Round GATT, notwithstanding the requirements of

42. *See* Decision of March 5, 1955, GATT B.I.S.D. (3d Supp.) at 32 (waiving the United States' GATT Article XI obligations); Davey, *supra* note 33, at 5.

43. *Id.*

44. GATT Article XIX allows trade restrictions when increased quantities of imports cause or threaten injury to the import-competing industry. *See* Alan Sykes, *Protectionism as a "Safeguard": A Positive Analysis of the GATT "Escape Clause" with Normative Speculations*, 58 U. CHI. L. REV. 255, 281-82, 286-87 (1991) (discussing the political and economic rationale for Article XIX).

45. Davey, *supra* note 33, at 36.

46. *Id.*

47. *Id.* at 5. Under GATT Article II, countries are required to limit their tariffs on particular goods to a specified maximum (tariff binding). *See generally* JOHN H. JACKSON, WORLD TRADE AND THE LAW OF GATT 201-03 (1969). While the pre-Uruguay Round GATT did not require tariff binding in the agricultural sector, a number of European countries agreed to bind tariffs on specific agricultural commodities. However, the E.U.'s Common Agricultural Policy (CAP) provided for tariffs on agricultural commodities exceeding the levels bound under the GATT. In order to implement these CAP provisions, the European Union renegotiated its GATT tariff commitments so as to eliminate many of the agricultural tariff bindings that had been adopted by individual E.U. member states. Davey, *supra* note 33, at 5. This enabled the European Union to adopt variable levies on agricultural imports in order to favor E.U. producers. *Id.*

GATT Article XI.[48] While other nations did not benefit from waivers of GATT obligations or any other special GATT concessions, they nevertheless cited the U.S. and E.U. deviation from the GATT Article XI prohibition on quantitative restrictions in order to justify their own violations of these rules in the agricultural sector.[49] Consequently, the provisions of GATT Article XI have seldom been enforced with respect to agricultural commodities.[50]

3. Agricultural Export Subsidies

Although the pre-Uruguay Round GATT prohibited export subsidies on manufactured goods,[51] GATT Article XVI:3 permitted agricultural export subsidies as long as the country providing the subsidies did not thereby gain more than an equitable share of world export trade in the subsidized product.[52] GATT contracting parties have rarely succeeded in challenging agricultural export subsidies under this provision because proving that the challenged subsidy brought about changes in market share is difficult.[53] Given the multiplicity of factors affecting commerce in agricultural products, there are often a variety of plausible explanations for changes in market share between the subsidizing exporter and the less (or non-) subsidizing complaining country.[54] Under these circumstances, GATT dispute resolution panels have been very reluctant to find that subsidized exports from one GATT contracting party displaced the exports of the complaining

48. Davey, *supra* note 33, at 6.

49. *Id.; see also* Jon G. Filipek, *Agriculture in a World of Comparative Advantage: The Prospects for Farm Trade Liberalization in the Uruguay Round of GATT Negotiations*, 30 HARV. INT'L L.J. 123, 138 (1989).

50. Davey, *supra* note 33, at 6.

51. GATT art. XVI:4.

52. GATT, art. XVI:3. The "more than equitable share of world export trade" concept was later refined in the Tokyo Round Subsidies Code. *See* Agreement on Interpretation and Application of Articles VI, XVI and XXII of the General Agreement on Tariffs and Trade, art. 10, GATT B.I.S.D. (26th Supp.) at 56, 59 (1980) [hereinafter Subsidies Code].

53. *See* Davey, *supra* note 33, at 49-51; *see* United States Subsidy on Unmanufactured Tobacco, Nov. 22, 1967, GATT B.I.S.D. (15th Supp.) at 116 (1968); European Communities—Refunds on Exports of Sugar, Nov. 6, 1979, GATT B.I.S.D. (26th Supp.) at 290 (1980); European Communities—Refunds on Exports of Sugar, Nov. 10, 1980, GATT B.I.S.D. (27th Supp.) at 69 (1981); European Communities—Subsidies on Exports of Wheat Flour, 18 U.S. EXPORT WEEKLY (BNA) 899 (1983).

54. European Communities—Subsidies on Exports of Wheat Flour, *supra* note 53, at 899 (concluding that the "more than equitable share of world export trade" concept of the Subsidies Code was too imprecise to apply to world wheat trade).

party.[55] Consequently, GATT Article XVI:3 has not been an effective mechanism for limiting export subsidies.[56]

4. Domestic Agricultural Subsidies

The pre-Uruguay Round GATT did not directly address the use of domestic agricultural subsidies, such as income and price supports.[57] However, there are two GATT provisions that may apply to domestic agricultural subsidies. First, GATT Article XVI:1 contains a general obligation to report all subsidies that operate to increase exports or decrease imports and to consult, on request, with other GATT members "on the possibility of limiting the subsidization."[58] This provision may apply to domestic subsidies to the extent that these subsidies lower the price of domestically produced goods and thereby enable domestically produced goods to undercut the price of imports. Second, GATT dispute resolution panels have concluded that the use of domestic subsidies to offset the expected benefits of a tariff reduction on imports may constitute nullification and impairment of GATT benefits pursuant to GATT Article XXIII.[59]

5. Sanitary and Phytosanitary Standards

The pre-Uruguay Round GATT did not address the panoply of health and safety regulations that are often perceived by developing countries as disguised protectionist barriers.[60] Developing countries are disproportionately affected by sanitary and phytosanitary regulations[61] because they often lack the scientific infra-

55. *Id.*

56. *Id.*; *accord*, JOHN H. JACKSON ET AL., LEGAL PROBLEMS OF INTERNATIONAL ECONOMIC RELATIONS 399 (4th ed. 2002).

57. Davey, *supra* note 33, at 38.

58. GATT art. XVI:1.

59. *See* European Economic Community—Payments and Subsidies Paid to Processors and Producers of Oilseeds and Related Animal Feed Proteins, Jan. 25, 1990, GATT B.I.S.D. (37th Supp.) at 86 (1991); Australian Subsidy on Ammonium Sulphate, Apr. 3, 1950, GATT B.I.S.D. at 188 (1952).

60. THE GATT URUGUAY ROUND, *supra* note 30, at 141.

61. Sanitary and phytosanitary measures are measures necessary to protect human, animal or plant life or health from pests, diseases, additives, contaminants, and toxins. *See* Agreement on the Application of Sanitary and Phytosanitary Measures, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, preamble, ¶ 1, *at* http://www.wto.org [hereinafter WTO Agreement].

structure necessary for compliance.[62] In light of the significant impact of these regulations on trade, sanitary and phytosanitary standards were placed on the agenda for the Uruguay Round negotiations.[63]

B. Agricultural Policy in Developing Countries under the Pre-Uruguay Round GATT

In contrast to the tendency of agricultural policy in developed countries to favor agricultural producers at the expense of urban consumers, agricultural policy in developing countries under the pre-Uruguay Round GATT was characterized by a transfer of income from rural farmers to urban dwellers.[64] Policies that transferred income from farmers to consumers included taxes on agricultural exports, subsidies on agricultural imports, and the payment to farmers of less than world market prices by state purchasing agencies.[65] In general, developing countries lacked the financial resources to subsidize agriculture,[66] and frequently viewed agriculture as less important than industry in the competition for limited government funds and as an important source of revenue for industrialization.[67] Developing countries also taxed agricultural producers in order to maintain affordable food prices for urban dwellers.[68] Without affordable food prices, protests and riots threatened to destabilize the governments of developing countries.[69]

During the 1980s, the Third World debt crisis coincided with a

62. THE GATT URUGUAY ROUND, *supra* note 30, at 141.

63. *Id.* at 141-42.

64. *Id.* at 154-55.

65. Hathaway & Ingco, *supra* note 34, at 2.

66. THE GATT URUGUAY ROUND, *supra* note 30, at 154. A significant exception was Brazil, which provided substantial subsidies to wheat, sugar cane and ethanol industries. *Id.* at 158.

67. *Id.* at 157; Sanoussi Bilal, *The Political Economy of Agricultural Policies and Negotiations, in* NEGOTIATING THE FUTURE OF AGRICULTURAL POLICIES; AGRICULTURAL TRADE AND THE MILLENNIUM WTO ROUND 1 83 (Sanoussi Bilal & Pavlos Pezaros eds., 2000); YOUNG, *supra* note 11, at 70-71 (1997); GABRIELE GEIER, FOOD SECURITY POLICY IN AFRICA BETWEEN DISASTER RELIEF AND STRUCTURAL ADJUSTMENT 9 (1995).

68. THE GATT URUGUAY ROUND, *supra* note 30, at 154-55; Bilal, *supra* note 67, at 83, in NEGOTIATING THE FUTURE OF AGRICULTURAL POLICIES; AGRICULTURAL TRADE AND THE MILLENNIUM WTO ROUND 1 (Sanoussi Bilal & Pavlos Pezaros eds., 2000).

69. *See infra* note 75 and accompanying text for a discussion of food riots resulting from the elimination of food subsidies.

sharp decline in international commodity prices.[70] Indebted countries that were heavily dependent on international trade were particularly affected.[71] Many developing countries adopted structural adjustment programs mandated by the International Monetary Fund (IMF) and the World Bank in order to obtain additional loans or as a precondition to the restructuring of existing debt.[72] These programs required currency devaluations, reductions in state spending, privatization of public enterprises, and removal of tariff and non-tariff barriers to imports.[73] As a result of these structural adjustment programs, agricultural policy in many developing countries was characterized by a high level of market openness even before the Uruguay Round reforms.[74] The opening of agricultural markets to foreign competition and the simultaneous reduction or elimination of food subsidies for urban dwellers resulted in violent food riots in the 1980s (known as "IMF riots") in several developing countries, including Venezuela, the Dominican Republic, Morocco, Madagascar, and Zambia.[75]

Developing countries accounted for a substantial share of global food production, and relied on agriculture as a significant source of export earnings.[76] Consequently, they were harmed by tariff

70. U.N. FOOD & AGRIC. ORG., STATE OF FOOD AND AGRICULTURE 2000, at Part II, *Half a Century of Food and Agriculture, The 1980s, available at* http://www.fao.org/docrep/x4400e/x4400e00.htm [hereinafter FAO 2000]; BELLO, *supra* note 14, at 24-25.

71. FAO 2000, *supra* note 70, at 26.

72. *Id.*; BELLO, *supra* note 14, at 26-28.

73. FAO 2000, *supra* note 70, at 26; BELLO, *supra* note 14, at 27-28.

74. FAO 2000, *supra* note 70, at 26.

75. YOUNG, *supra* note 11, at 44-45; SUSAN GEORGE, A FATE WORSE THAN DEBT: THE WORLD FINANCIAL CRISIS AND THE POOR 78-80, 153-54 (1990); *See also* James Thuo Gathii, *Retelling Good Governance Narratives on Africa's Economic and Political Predicaments: Continuities and Discontinuities in Legal Outcomes Between Markets and States,* 45 VILL. L. REV. 971, 1013-15 (2000) (discussing how the World Bank's preference for market liberalization favors efficiency at the expense of social justice).

76. THE GATT URUGUAY ROUND, *supra* note 30, at 155. In 1998, 12 out of 18 countries in sub-Saharan Africa relied on agriculture for over half of their total export earnings. The comparable figure for Latin America and the Caribbean was 10 out of 37. Countries where agriculture accounted for 70 percent or more of export earnings included Belize, Paraguay, Burundi, Cote d'Ivoire, Ethiopia, Kenya, Guinea-Bissau, Malawi, Uganda, and the Sudan. FAO 2000, *supra* note 70, at Part II, *Agricultural Trade—Changing Trends and Patterns.* The dependence of developing countries on agricultural production for a significant share of export revenues has its roots in the integration of Asia, Africa, and Latin America into the global economy between the sixteenth and twentieth centuries. The role of colonial and neo-colonial "peripheral" economies was to export raw materials, including food products, to the "core" regions of the industrialized world. Many developing countries came to spe-

and non-tariff barriers that excluded their exports from developed country markets and by subsidies that undermined the competitiveness of developing country exports in world markets.[77] One study published during the Uruguay Round negotiations found that developing countries lost approximately $35 billion a year as a consequence of declining market share for agricultural products.[78]

Developing countries were also harmed by the dumping of agricultural surpluses by the United States and the European Union on world markets at below-production costs.[79] The dumping of

cialize in one or two export commodities, making these countries highly vulnerable to commodity price fluctuations and to poor harvests. YOUNG, *supra* note 11, at 41-42. *See also* COOTE, *supra* note 8, at 41 (describing how the French colonial government induced farmers in Chad to grow cotton for export and explaining the adverse consequences of Chad's continued reliance on cotton as the country's principal cash crop) Indeed, between 1980 and 1988, the terms of trade between agricultural commodities and manufactured goods declined by more than 50 percent. 1 U.N. FOOD & AGRIC. ORG. (FAO), MULTILATERAL TRADE NEGOTIATIONS ON AGRICULTURE: A RESOURCE MANUAL, at 13 (2000) [hereinafter FAO RESOURCE MANUAL, Vol. I].

77. THE GATT URUGUAY ROUND, *supra* note 30, at 155-56. However, developing countries are far from homogeneous. Many net food-importing developing countries benefited from low food prices resulting from industrialized country export subsidies. *Id.* at 133. Others, particularly highly indebted agricultural exporters, were injured by the loss of market share and by declining commodity prices resulting in part from industrialized country subsidies. *Id.* at 156.

78. *World Trade Talks Near Collapse over Farm Subsidies Row*, FIN. TIMES, Oct. 19, 1990, at 1.

79. M.C. HALLBERG, POLICY FOR AMERICAN AGRICULTURE: CHOICES AND CONSEQUENCES 144, 156-57 (1992); COOTE, *supra* note 8, at 116; STEVENS, *supra* note 34, at 12; KEVIN WATKINS, AGRICULTURAL TRADE AND FOOD SECURITY 25-27, 46 (1995) (describing the massive scale of U.S. and E.U. export dumping, and estimating that for every dollar of U.S. wheat purchased by the Philippines in 1991, the U.S provided subsidies equivalent to just under $1.40). The United States has long relied on export dumping to increase the U.S. share of world agricultural markets, to support farm incomes and to dispose of surplus agricultural commodities. One of the earliest export subsidy programs was the Agricultural Trade Development and Assistance Act, known as Public Law 480. This statute was passed in 1954 in order to dispose of agricultural surplus by selling it to developing countries on highly favorable terms or providing it free of charge as food aid. HALLBERG at 152-54; Edward Clay, *Food Aid, Development and Food Security*, *in* AGRICULTURE AND THE STATE 202, 210-13 (C. Peter Timmer ed., 1991). In the 1960s, this program accounted for a significant share of U.S. agricultural exports, reaching a high of almost 28 percent in 1963. U.S. DEP'T OF AGRIC., AGRICULTURAL STATISTICS: 1964 (1964). It declined to 3 to 4 percent of total agricultural imports during the late 1980s. U.S. DEP'T OF AGRIC., AGRICULTURAL STATISTICS: 1990, 483, tbl. 684 (1990) (describing U.S. agricultural exports, in terms of value under specified government-financed programs for fiscal years 1984-89). While the availability of food aid may have enabled developing countries to allocate resources to industrial development, the program lowered food prices in developing countries, thereby discouraging production, hindering economic development, and creating long-term dependence on food aid. Clay, *supra*, at 213-23; Walter P. Falcon, *Wither Food Aid? A Comment*, *in* AGRICULTURE

agricultural commodities on world markets increased food insecurity in developing countries by undercutting domestic production.[80] The availability of cheap imported food depressed domestic food prices in developing countries, lowered the income of local farmers, and reduced incentives to invest in agriculture.[81] Export dumping also reduced the export earnings of developing country producers by depressing world market prices for agricultural commodities.[82]

C. The Uruguay Round Negotiations

The WTO Agreement on Agriculture was shaped by the intense rivalry between the United States and the European Union for world agricultural markets.[83] As explained below, developing countries were almost entirely left out of the negotiating process. This section provides a brief overview of the negotiations in order to provide insight into the key provisions of the Agreements.

Although agricultural trade had been an important issue in the successive rounds of GATT negotiations since the 1960s, it did not rise to the top of the GATT negotiating agenda until the Uruguay

AND THE STATE, at 237; HALLBERG, *supra*, at 156-57. The declining role of Public Law 480 can be attributed at least in part to the introduction in 1985 of the Export Enhancement Program (EEP), which was designed to increase the U.S. share of world agricultural markets by reducing the price of U.S. agricultural products to specific overseas markets. The U.S. government made direct cash or in-kind payments to U.S. exporters to cover the difference between U.S. domestic prices and lower world market prices. Christopher Rusek, *Trade Liberalization in Developed Countries: Movement Toward Market Control of Agricultural Trade in the United States, Japan, and the European Union*, 48 ADMIN. L. REV. 493, 499-500 (1996); *see also* Liane L. Heggy, *Free Trade Meets U.S. Farm Policy: Life After the Uruguay Round*, 25 LAW & POL'Y INT'L BUS. 1367, 1374-75 (1994). The EEP was implemented not only to increase exports but also to apply pressure to the E.U. during the Uruguay Round agricultural negotiations by competing directly with E.U. products and threatening to recapture world market shares of key agricultural exports. *Uruguay Round of Multilateral Trade Talks Tops U.S. Trade Agenda for 1991 as Administration, Congress Also Prepare to Deal with Range of Other Issues*, 8 Int'l Trade Rep. (BNA) at 60 (Jan. 9, 1991); G. Ames, *U.S.-EC Agricutural Policies and GATT Negotiations*, 6(4) AGRIBUSINESS 83-95 (1998). As explained in Section IV of this article, the U.S. has curtailed EEP spending in order to comply with its export subsidy reduction obligations under the WTO Agreement on Agriculture, but has continued to promote exports by providing direct aid to farmers and by providing government credit on concessional terms.

80. WATKINS, *supra* note 79, at 24; YOUNG, *supra* note 11, at 46-47.

81. COOTE, *supra* note 8, at 116.

82. WATKINS, *supra* note 79, at 25.

83. Thomas J. Schoenbaum, *Agricultural Trade Wars: A Threat to the GATT and Global Free Trade*, *in* GATT AND TRADE LIBERALIZATION IN AGRICULTURE 72 (Masayosi Homna et al., eds., 1993).

Round.[84] The Uruguay Round negotiations occurred in the context of vigorous competition between the United States and the European Union to expand their respective shares of world agricultural markets.[85] Through a combination of domestic price supports and export subsidies adopted pursuant to its Common Agricultural Policy, the E.U. had transformed itself from a net food importer to a net food exporter,[86] and was rapidly gaining market share by dumping surplus production on world markets.[87] Facing budgetary pressure to reduce agricultural subsidies and hoping to benefit domestic producers by curbing E.U. subsidies, the United States made agricultural reform a high priority in GATT negotiations.[88]

From the beginning of the negotiations, the debate over agricultural trade liberalization was dominated by the U.S. and the E.U.[89] The U.S. called for a phaseout of agricultural export subsidies over a five-year period, the conversion into tariffs of non-tariff import barriers, and a reduction of certain trade-distorting domestic subsidies.[90] The E.U. sought to protect its Common Agricultural Policy in the face of attacks from other food-exporting countries[91] and

84. *Id.*; Jeffrey Steinle, *The Problem Child of World Trade: Reform School for Agriculture*, 4 MINN. J. GLOBAL TRADE 333, 342-44 (1995).

85. Schoenbaum, *supra* note 83, at 72-73; *see also* ROBERT O'BRIEN, SUBSIDY REGULATION AND STATE TRANSFORMATION IN NORTH AMERICA, THE GATT AND THE E.U. 132 (1997) (describing the conflict between the U.S. and the E.U. over world export markets).

86. Schoenbaum, *supra* note 83, at 81. Between 1950 and 1997, the E.U. reduced its share of the world import volume of wheat, rice and maize from 62.6 percent to 16.1 percent. The E.U.'s export share increased from 5 to 17.9 percent. FAO 2000, *supra* note 70, at Part II, Food and Nutrition Security: Why Food Production Matters, Self-Sufficiency in Food Staples and National Food Security.

87. O'BRIEN, *supra* note 85, at 133.

88. THE GATT URUGUAY ROUND, *supra* note 30, at 172. The United States understood that it could not undertake agricultural reform without a parallel commitment from its trading partners. Indeed, U.S. acreage reduction programs of the 1980s had enabled the European Union to capture agricultural markets traditionally supplied by U.S. *Id.*

89. Schoenbaum, *supra* note 83, at 73-74; O'BRIEN, *supra* note 85, at 133-36.

90. THE GATT URUGUAY ROUND, *supra* note 30, at 172-75.

91. *Id.* at 178. The CAP protected E.U. agricultural markets from fluctuations in world agricultural prices through variable import levies, price supports and other measures. *Id.* In the absence of controls on production, high domestic prices relative to world market prices resulted in considerable overproduction by E.U. farmers. Walden Bello, *Building an Iron Cage: The Bretton Woods Institutions, the WTO and the South*, *in* VIEWS FROM THE SOUTH: THE EFFECTS OF GLOBALIZATION AND THE WTO ON THIRD WORLD COUNTRIES 54, 79 (Sarah Anderson ed., 2000). The CAP utilized export subsidies to facilitate the disposal of this surplus production in world markets, drawing harsh criticism from other food-exporting countries, including the United States. *Id.* Because the CAP was the result of many years

countered with a more modest subsidy reduction proposal designed to preserve the status quo.[92]

Although the U.S. and the E.U. were the key players in the Uruguay Round agriculture negotiations, other countries did have contrasting positions on appropriate agricultural trade policy. The so-called "Cairns Group" of agricultural exporters (Argentina, Australia, Brazil, Canada, Chile, Colombia, Fiji, Hungary, Indonesia, Malaysia, New Zealand, the Philippines, Thailand and Uruguay) advocated the elimination of import restrictions and export subsidies, and generally supported the proposals advanced by the United States.[93] Japan and South Korea, both net food-importing nations, placed great emphasis on the need to support domestic production in order to promote food security.[94] South Korea also argued for special and differential treatment for developing countries, including longer timeframes to remove import restrictions, greater discretion in selecting which commodities to subject to such expanded market access, improved access to developed country markets, and special allowances for developing country subsidization of basic foodstuffs production.[95] Finally, developing countries, led most often by India, Jamaica and Egypt, overcame their many differences and adopted a common position advocating elimination of developed country protectionism while underscoring the important role of agricultural support mechanism for the economic development in non-industrialized nations.[96] Like South Korea, these countries placed prime importance on food security and advocated special and differential treatment for developing countries.[97]

The impasse between the United States and the European Union over agricultural trade produced a bitter deadlock in the Uruguay Round negotiations and threatened to derail a final accord on a

of political compromise in the E.U. and was a central aspect of European integration, there was very little support for its elimination. THE GATT URUGUAY ROUND, *supra* note 30, at 178.

92. THE GATT URUGUAY ROUND, *supra* note 30, at 178-81.

93. *Id.* at 182-86. The Cairns group was formed in 1986 to engage in collective efforts to reduce agricultural subsidies in world trade. The members of the Cairns group produced approximately one fourth of total world agricultural exports and claimed to employ no agricultural trade subsidies. *See* Heggy, *supra* note 79, at 1394, 1394 n.177.

94. THE GATT URUGUAY ROUND, *supra* note 30, at 186-90.

95. *Id.* at 190-91.

96. *Id.* at 191.

97. *Id.*

comprehensive package of trade reforms.[98] Indeed, beginning in 1992, the U.S.-E.U. negotiations took center stage and most of the other 106 parties were left out of the negotiating process.[99] The reduction of export subsidies became the critical issue in the negotiations, and the final agreement incorporating agriculture into the multilateral trade regime resulted from compromises between the U.S. and the E.U. on this and other issues.[100] The terms of the agreement, which reflect the needs and priorities of developed countries, are discussed in Section III *infra*.

III. MAJOR PROVISIONS OF THE WTO AGREEMENT ON AGRICULTURE

The WTO Agreement on Agriculture[101] obligates WTO members to liberalize agricultural trade in three significant respects. First, the Agreement expands market access by requiring the conversion of all non-tariff barriers to tariffs (tariffication) and the binding and reduction of these tariffs.[102] Second, the Agreement requires

98. Schoenbaum, *supra* note 83, at 88; O'BRIEN, *supra* note 85, at 134-36. The terms of the Uruguay Round required that there be a final agreement on all issues or none at all. Consequently, the impasse over agricultural trade held hostage agreements encompassing a wide range of trade-related issues, including intellectual property rights, safeguards, textiles, services, dispute settlement, tariffs, trade-related investment, and non-tariff measures. Schoenbaum, *supra*, at 88.

99. THE GATT URUGUAY ROUND, *supra* note 30, at 217. In 1992, the E.U. rejected the draft agreement prepared by Arthur Dunkel, the chair of the agricultural negotiations, and embarked on direct negotiations with the U.S. for amendments that became known as the Blair House agreement. *See* JOHN CROOME, RESHAPING THE WORLD TRADING SYSTEM: A HISTORY OF THE URUGUAY ROUND 340 (1995); *see also* Hathaway & Ingco, *supra* note 34, at 3-7 (describing the major stages in the negotiations between the U.S. and the E.U.). The exclusion of the majority of WTO member states from the WTO decision-making process has been the subject of ongoing complaints from developing countries and has even been acknowledged by U.S. trade officials. At the 1999 WTO Ministerial meeting in Seattle, for example, U.S. Trade Representative Charlene Barshefsky admitted that the WTO decision-making process (known as the "Green Room/consensus process") was highly inequitable and exclusionary. "All meetings were held between 20 and 30 key countries. That meant 100 countries, 100, were never in the room. This led to extraordinarily bad feeling that they were left out of the process and that the results had been dictated to them by the 25 or 30 privileged countries in the room." *World Trade and Development: Developing States Resist Calls for New Trade Talks*, BANGKOK POST, March 27, 2001; *see also* Shada Islam, *Developing States Must be Heard in WTO*, BUSINESS TIMES (Singapore), Jan. 12, 2000, at 12 (criticizing the WTO's "elitist, exclusive decision-making processes" and "total lack of a democratic culture").

100. O'BRIEN, *supra* note 85, at 138-40.

101. Agreement on Agriculture Annex 1A, Part III.

102. Dale E. McNiel, *Agricultural Trade Symposium: Furthering the Reforms of Agricultural Policies in the Millenium Round*, 9 MINN. J. GLOBAL TRADE 41, 61 (2000); Kevin J. Brosch, *The*

the reduction of both the volume of and expenditures on subsidized exports.[103] Third, the Agreement requires the reduction of trade-distorting domestic subsidies.[104] The Agreement also provides for the negotiation of further agricultural reforms, beginning in early 2000,[105] and exempts both domestic subsidies and export subsidies from certain provisions of the GATT 1994 and the Agreement on Subsidies and Countervailing Duties until 2003.[106] The key provisions of the Agreement are examined in Parts III(A) through III(E) below.

A. Market Access

The WTO Agreement on Agriculture requires the conversion of all non-tariff import restrictions (such as quotas, embargoes, variable import levies, minimum import prices, and non-tariff measures maintained by state enterprises) into tariff barriers that provide an equivalent level of protection.[107] The tariff equivalents resulting from this conversion, plus existing duties, must then be bound and reduced below a 1986–88 base level over a period of several years.[108] The precise amount of the tariff reduction is specified in each country's individual tariff schedule.[109] Developed countries are required to reduce these bound tariffs by an average of 36 percent over 6 years (1995–2000), with a minimum reduction rate of 15 percent for each product line.[110] In accordance with the principle of special and differential treatment, develop-

Uruguay Round Agreement on Agriculture in the GATT, in THE GATT, THE WTO AND THE URUGUAY ROUND AGREEMENTS 875-76 (H. Applebaum & L. Schlitt eds., 1995). The tariff reduction and other market access obligations are spelled out in individual country schedules rather than in the body of the Agreement. *See* Agreement on Agriculture art. 4.

103. McNiel, *supra* note 102, at 70; Joseph McMahon, *supra* note 40, at 426-29 (1995); Steinle, *supra* note 84, at 349-50.

104. McNiel, *supra* note 101, at 56-58; McMahon, *supra* note 40, at 426-29; Steinle, *supra* note 84, at 352-55.

105. Agreement on Agriculture art. 20.

106. *Id.* art. 13.

107. McNiel, *supra* note 102, at 61; McMahon, *supra* note 40, at 419; Brosch, *supra* note 102, at 875. Tariffs are preferred over non-tariff barriers because they are more transparent and therefore easier to monitor and negotiate downward. Ian Sturgess, *The Liberalisation Process in International Agricultural Trade: Market Access and Export Subsidies, in* NEGOTIATING THE FUTURE OF AGRICULTURAL POLICIES: AGRICULTURAL TRADE AND THE MILLENNIUM WTO ROUND 135, 139 (Sanoussi Bilal & Pavlos Pezaros eds., 2000).

108. Sturgess, *supra* note 107, at 144-47.

109. Steinle, *supra* note 84, at 346.

110. Sturgess, *supra* note 107, at 147; Steinle, *supra* note 84, at 346.

ing countries are required to reduce these bound tariffs by an average of 24 percent over 10 years (1995–2004), with a minimum reduction rate of 10 percent for each product line.[111] Least developed countries are subject to tariffication and tariff binding, but are not subject to tariff reduction.[112] The Agreement prohibits WTO members from maintaining or reverting to the non-tariff barriers which were required to be converted into tariffs.[113]

The Agreement contains a special safeguard provision that allows the imposition of an additional duty on a product subject to tariffication in the event of an import surge or in the event of particularly low prices, compared with 1986-88 levels.[114] For example, if the world market price for a particular commodity drops by more than 10 percent below the 1986-88 reference price (the trigger price), an additional duty may be applied to maintain price stability.[115] This additional duty, which rises as the world market price for the commodity drops,[116] resembles the variable levy system used by the European Union to protect domestic markets from cheaper foreign imports.[117] Indeed, the special safeguard provision was inserted into the Agreement at the insistence of the E.U.[118] Additional duties may also be imposed if the volume of imports exceeds 25 percent of the average volume of imports in the preceding three-year period.[119]

Perhaps anticipating that the conversion of non-tariff barriers into tariffs might result in prohibitively high tariffs, the Agreement's current and minimum access provisions are designed to prevent the tariffication process from having the perverse effect of reducing market access.[120] The Agreement requires WTO members to maintain "current access opportunities," defined as no less than the average of annual import quantities for the years 1986 to 1988.[121] In the event that there were no significant imports during

111. Sturgess, *supra* note 107, at 147; McNiel, *supra* note 102, at 62; *see* Agreement on Agriculture art. 15:2.

112. McNiel, *supra* note 102, at 62; *see* Agreement on Agriculture art. 15:2.

113. Agreement on Agriculture art. 4.

114. *Id.* art. 5.

115. *Id.* arts. 5:1(b), 5:5; *see also* Sturgess, *supra* note 107, at 147.

116. Agreement on Agriculture art. 5:5.

117. Sturgess, *supra* note 107, at 147.

118. *Id.*

119. Agreement on Agriculture art. 5:1(a), 5:4.

120. Sturgess, *supra* note 107, at 147.

121. McNiel, *supra* note 102, at 61.

the base year, WTO members must provide "minimum access" opportunities through the introduction of tariff rate quotas (TRQs).[122] Tariff rate quotas allow a set volume of imports to enter the domestic market at a reduced tariff.[123] These quotas were set initially at 3 percent of the 1986-1988 base period domestic consumption, rising to 5 percent by the year 2000.[124]

B. Export Subsidies

The WTO Agreement on Agriculture requires developed countries to reduce expenditures for export subsidies by 36 percent and to reduce their volume of subsidized exports by 21 percent over 6 years (1995-2000) based on the 1986-90 base period.[125] In accordance with the principle of special and differential treatment, developing countries are required to reduce expenditures for export subsidies by 24 percent and to reduce their volume of subsidized exports by 14 percent over 10 years (1995-2004).[126] Least developed countries are exempt from the obligation to reduce export subsidies but are obligated not to increase subsidized exports.[127]

Unlike the market access provisions, the requirement to cut export subsidies by a specific percentage applies on a commodity-by-commodity basis rather than on the basis of an industry-wide average.[128] However, the Agreement does not prohibit the aggregation of commodities for the purpose of complying with export subsidy reduction obligations.[129] For example, some countries have treated wheat, wheat flour and other wheat derivatives as a single group.[130] Consequently, a country that subsidized wheat and wheat products during the base period will have the flexibility to shift subsidies among these products as long as it complies

122. *Id.*; Sturgess, *supra* note 107, at 147.

123. STEVENS, *supra* note 34, at 41.

124. McNiel, *supra* note 102, at 61; Sturgess, *supra* note 107, at 147.

125. Brosch, *supra* note 102, at 868; McMahon, *supra* note 40, at 429.

126. McMahon, *supra* note 40, at 429; Sturgess, *supra* note 107, at 148; *see* Agreement on Agriculture art. 15:2. The Agreement also exempts developing countries from the obligation to reduce marketing subsidies, such as international and internal transport and freight charges, provided that these are not used to circumvent subsidy reduction obligations. *Id.* art. 9:4.

127. Sturgess, *supra* note 107, at 148; McMahon, *supra* note 40, at 429; *see* Agreement on Agriculture art. 15:2.

128. Agreement on Agriculture art. 9; Sturgess, *supra* note 107, at 147-48.

129. Hathaway & Ingco, *supra* note 34, at 19.

130. *Id.*

with its export reduction commitments with respect to these commodities in the aggregate.[131]

Only the six export subsidies specifically enumerated in the Agreement are subject to reduction.[132] However, the Agreement prohibits the utilization of export subsidies not listed in the Agreement in a manner that results or may result in the "circumvention of export subsidy commitments,"[133] and prohibits the creation of export subsidies for agricultural products which were not subsidized during the 1986-90 base period.[134] The former provision has been widely interpreted as a prohibition on export subsidies that are not listed in the Agreement.[135] The latter provision would preclude countries that did not utilize export subsidies during the base period from utilizing them in the future.[136] The Agreement permits the provision of food aid that is not tied directly or indirectly to commercial exports of agricultural products, provided that food aid is given, to the fullest extent possible, in grant form and in accordance with the 1986 Food Aid Convention and with the U.N. Food and Agriculture Organization's "Principles of Surplus Disposal and Consultative Obligations."[137]

C. Domestic Subsidies

The WTO Agreement on Agriculture requires WTO members to reduce domestic subsidies based on an Aggregate Measure of Support (AMS).[138] The Base Total AMS for each WTO member is a quantification of all domestic agricultural subsidies during the

131. *Id.*

132. Agreement on Agriculture art. 9:1. These include: (a) direct subsidies to producers, including in-kind payments, contingent on export performance; (b) the sale or disposal for export by governments of agricultural products at a price lower than the comparable price charged for the like product on the domestic market; (c) subsidies to reduce marketing costs (other than export promotion or advisory services), including handling and transportation costs. *Id.*

133. *Id.* art. 10:1. The only cases examining Articles 9 and 10 of the WTO Agreement on Agriculture in any detail are the Panel Report and the Appellate Body Report in *Canada—Measures Affecting the Importation of Milk and the Exportation of Dairy Products.* See WT/DS103/RW, WT/DS113/RW (July 11, 2001) (the Panel Report); WT/DS103/AB/RW, WT/DS113/AB/RW (Dec. 3, 2001) (the Appellate Body Report).

134. Agreement on Agriculture art. 3:3.

135. McNiel, *supra* note 102, at 70; Brosch, *supra* note 102, at 869.

136. Hathaway & Ingco, *supra* note 34, at 19.

137. Agreement on Agriculture art. 10:4.

138. *Id.* art. 6:1.

1986-88 base period.[139] The Agreement requires a 20 percent reduction in Base Total AMS over 6 years (1995-2000) for developed countries and a 13.3 percent reduction in Base Total AMS over 10 years (1995-2004) for developing countries.[140] Compliance is measured by the Current Total AMS, which refers to the level of support actually provided in any given year.[141]

While the Base Total AMS (the benchmark from which reductions are made) is a comprehensive quantification of domestic subsidies during the base period, the Current Total AMS (the standard used to measure compliance) only includes the subsidies deemed to be most trade-distorting (so-called "amber box" policies).[142] Two significant forms of domestic support are specifically excluded from the Current Total AMS.[143] First, for developed countries, the Current Total AMS excludes products where the amount of support is less than 5 percent of the total annual value of production (the de minimis exception).[144] The corresponding percentage for developing countries is 10 percent.[145] Second, the Current Total AMS excludes direct payments under production limiting programs (the "blue box" exemption),[146] such as U.S. deficiency payments and E.U. compensation payments, both of which pay farmers the difference between a government target price for agricultural commodities and the corresponding market price.[147] As discussed more fully in Section IV(C) below, including U.S. deficiency payments and E.U. compensation payments in the calculation of the Base Total AMS while excluding them from the Current Total AMS has the effect of giving the U.S. and the E.U. credit for domestic subsidy reductions they never made.[148]

139. *Id.* art. 1(h)(i), Annex 3.

140. McMahon, *supra* note 40, at 428; Brosch, *supra* note 102, at 872; Dimitris Moutsatsos, *The Uruguay Round Agreement on Agriculture: Issues and Perspectives, in* NEGOTIATING THE FUTURE OF AGRICULTURAL POLICIES: AGRICULTURAL TRADE AND THE MILLENNIUM WTO ROUND 29, 31 (Sanoussi Bilal & Pavlos Pezaros eds., 2000).

141. Agreement on Agriculture arts. 1(h)(ii), 6:3.

142. McNiel, *supra* note 102, at 57 n.112; Agreement on Agriculture art. 6.5.

143. Agreement on Agriculture arts. 6.4, 6.5.

144. *Id.* art. 6:4.

145. *Id.*

146. *Id.* art. 6:5; McNiel, *supra* note 102, at 57 n. 112. This exception applies if the payments are based on fixed area and yields and are made on 85 percent or less of the base level of production or are livestock payments based on a fixed number of head. Agreement on Agriculture art. 6:5.

147. McNiel, *supra* note 102, at 56-57.

148. Randy Green, *The Uruguay Round Agreement on Agriculture,* 31 LAW & POL'Y INT'L

Finally, the Agreement does not require the reduction of certain support measures provided through government programs that are deemed to have minimal or no trade-distorting effects (the "green box" exemption)[149] and certain other measures used by developing countries to promote rural development.[150] These "green box" measures include income support to farmers decoupled from production, income safety-net programs, crop insurance programs and payments under environmental programs.[151] Investment subsidies generally available to agriculture in developing countries, input subsidies made available to low-income and resource-poor farmers in developing countries, and domestic subsidies to encourage diversification from growing illicit narcotic crops are likewise excluded from domestic support reduction obligations.[152]

D. Sanitary and Phytosanitary Standards

The WTO Agreement on Agriculture does not address sanitary and phytosanitary standards because these were the subject of a separate Uruguay Round agreement. Instead, the Agreement merely obligates WTO members to comply with the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement).[153] The SPS Agreement and the beef hormone case decided pursuant to the SPS Agreement have spawned a voluminous literature on trade and food safety[154] and are therefore not

BUS. 819, 822 (2000); *see also* McNiel, *supra* note 102, at 57.

149. Agreement on Agriculture Annex 2.

150. *Id.* art. 6:2.

151. *Id.* Annex 2:6, 2:7, 2:8, 2:12. The term "income support decoupled from production" refers to subsidies that do not affect farmers' current or future production decisions. In other words, farmers would make production decisions based solely on world market prices. *See* HALLBERG, *supra* note 79, at 331. Other examples of permissible "green box" subsidies include public stockholding for food security purposes, domestic food aid, general services provided to agriculture or rural communities (such as research, pest and disease control, and extension and advisory services), and payments under regional assistance programs. *See* Agreement on Agriculture annex 2:2- 2:13.

152. Agreement on Agriculture art. 6:2.

153. *Id.* art. 14.

154. *See, e.g.*, RECONCILING ENVIRONMENT AND TRADE 403-07 (Edith Brown Weiss & John H. Jackson eds., 2001) (providing a bibliography relating to food safety and the beef hormone case); Charles F. De Jager, *The European Union's Position on Agriculture after the WTO Appellate Body's Decision in Beef Hormones*, *in* RECONCILING ENVIRONMENT AND TRADE 303; Regine Neugebaur, *Fine-Tuning WTO Jurispurdence and the SPS Agreement to Improve Trade Integration and Harmonization*, in RECONCILING ENVIRONMENT AND TRADE 325; Christopher Bisgaard, *Assessing the Standard of Review for Trade-Restrictive Measures in the Sanitary and Phytosanitary Agreement*, *in* RECONCILING ENVIRONMENT AND TRADE 353; Kevin C. Ken-

addressed in this article.

E. Further Negotiations

The WTO Agreement on Agriculture requires the parties to negotiate additional reforms beginning in early 2000, taking into account, *inter alia*, the effects of the reduction commitments on world trade in agriculture, special and differential treatment for developing countries, and non-trade concerns, including food security and environmental protection.[155] These negotiations began during the 1999 WTO Ministerial Meeting in Seattle and continued through the 2001 WTO Ministerial Meeting in Qatar.[156] One incentive to the prompt completion of these negotiations is the expiration of the so-called "peace clause" at the end of 2003.[157] The "peace clause" precludes the imposition of countervailing duties or the initiation of WTO dispute settlement proceedings under certain provisions of the 1994 GATT and the Agreement on Subsidies and Countervailing Duties to challenge agricultural subsidies that comply with the terms of the WTO Agreement on Agriculture.[158]

IV. ASSESSING THE WTO AGREEMENT ON AGRICULTURE: DID IT CREATE A FAIR AND MARKET-ORIENTED TRADING SYSTEM?

Despite the free market ideology that ostensibly underlies the WTO Agreement on Agriculture, the Agreement has enabled de-

nedy, *Resolving International Sanitary and Phytosanitary Disputes in the WTO: Lessons and Future Directions*, 55 FOOD DRUG L.J. 81 (2000).

155. Agreement on Agriculture art. 20.

156. *See, e.g, WTO Extends Deadline in Hope of Compromise: European Farm-Export Subsidies Thwart Agreement*, SEATTLE POST-INTELLIGENCER, Nov. 14, 2001, at C1; Vanessa Gould, *New Trade Round Agreed: WTO Ministers Clear Agricultural Subsidies Hurdle After Six Days of Haggling*, SOUTH CHINA MORNING POST, Nov. 15, 2001, at 1.

157. *See* Agreement on Agriculture art. 13 (setting forth the terms of the peace clause); *Id.* art. 1(f) (explaining that the peace clause remains in effect through the end of 2003); *see also* Moutsatsos, *supra* note 140, at 47.

158. Agreement on Agriculture art. 13. Under Article 13(a) and 13(b), domestic support measures that comply with the reduction commitments or with the de minimis, "blue box" or "green box" exemptions are, under certain circumstances, non-actionable subsidies for purposes of countervailing duties and are exempt from actions under the 1994 GATT and the Agreement on Subsidies and Countervailing Duties. Under Article 13(c), export subsidies that conform to the Agreement are also exempt from challenge under the 1994 GATT and the Agreement on Subsidies and Countervailing Duties. The "peace clause" expires in 2003. *Id.* arts. 13, 1(f).

veloped countries to maintain trade-distorting subsidies and import restrictions, and has thereby failed to achieve its stated objective of creating a "fair and market-oriented trading system."[159] This section examines why the Agreement's provisions with respect to market access, export subsidies and domestic subsidies failed to correct distortions and inequities in world agricultural markets that systematically favor agricultural producers in developed countries.

A. Market Access

The market access requirements of the WTO Agreement on Agriculture produced very little liberalization in the highly protected markets of OECD countries.[160] One of the great innovations of the Agreement was the conversion of non-tariff barriers to tariffs and the prohibition of any further non-tariff barriers.[161] However, many developed countries evaded the underlying objective of these requirements by engaging in "dirty tariffication," the setting of tariff equivalents for non-tariff barriers at an excessively high level.[162] Dirty tariffication nullified the benefits of tariff bindings and tariff reduction by creating tariff equivalents, to which subsequent reductions apply, that were at times more import-restrictive than the non-tariff barriers they replaced.[163]

A survey of tariffication procedures used by developed countries concluded that the majority of OECD countries had engaged in dirty tariffication.[164] In many instances, dirty tariffication re-

159. *See id.* preamble ¶ 2. The preamble to the WTO Agreement on Agriculture purports to address inequities in world agricultural markets by "correcting and preventing restrictions and distortions" and "providing for a greater improvement of opportunities and terms of access for agricultural products of particular interest to [developing country] Members." Agreement on Agriculture preamble, ¶¶ 3, 5. The Agreement's long-term objective is to "establish a fair and market-oriented agricultural trading system . . . through the establishment of strengthened and more operationally effective GATT rules and disciplines." *Id.* ¶ 2.

160. Hathaway & Ingco, *supra* note 34, at 8.

161. *Id.* at 8.

162. *Id.* at 11-15; Sturgess, *supra* note 107, at 148-49.

163. *See* Sturgess, *supra* note 107, at 149.

164. Hathaway & Ingco, *supra* note 34, at 8. While some developing countries also engaged in dirty tariffication, most developing countries did not engage in tariffication at all. Instead, these countries declared bound tariffs subject to reduction commitments. *Id.* at 11; STEVENS, *supra* note 34, at 40. Many of these tariffs were set at levels far higher than the current applied tariffs, and are therefore unlikely to constrain agricultural policy unless a country wished to impose significant tariff increases. *Id.* at 40. However, some developing

sulted in higher levels of protection than under the old system of quotas and variable import levies.[165] Moreover, the highest tariffs were for sugar, tobacco, meat, milk products, cereals and, to a lesser degree, fruits and vegetables, precisely the products of particular interest to developing countries.[166]

The manner in which OECD countries implemented the Agreement's tariff reductions requirements likewise restricted the market access of developing country producers. The WTO Agreement on Agriculture required a 36 percent *average* reduction in tariffs (subject to a 15 percent minimum reduction on each tariff), and thereby allowed countries to pick and choose which individual tariffs to reduce.[167] OECD countries generally made large tariff reductions on items that were not produced domestically or where tariff levels were already quite low in order to make minimal concessions on imports that competed with domestically produced items.[168] For example, tariff reductions were often lower on temperate-zone products and higher on tropical products.[169] Food staples, fruits and vegetables, and processed food products remained subject to very high tariffs (tariff peaks).[170] Indeed, the tariff peaks on processed food illustrate the ongoing problem of tariff escalation, whereby tariffs rise as the processing chain ad-

countries set their tariffs at low levels and may have fewer tools at their disposal to address market price fluctuations or import surges. *See infra* notes 295-97 and accompanying text.

165. Hathaway & Ingco, *supra* note 34, at 11; *see also* OECD, PRELIMINARY REPORT ON MARKET ACCESS ASPECTS OF UR IMPLEMENTATION, Document COM/AGR/APM/TD/WP 50 (June 1999).

166. U.N. CONF. ON TRADE & DEV, UNCTAD/WTO JOINT STUDY: THE POST-URUGUAY ROUND TARIFF ENVIRONMENT FOR DEVELOPING COUNTRY EXPORTS: TARIFF PEAKS AND TARIFF ESCALATION, TD/B/COM.1/14/Rev. 1, 4-6 (2000) (explaining that developed countries maintained tariff peaks as high as 350-900 percent ad valorem on certain developing country food exports).

167. Sturgess, *supra* note 107, at 148.

168. *Id.*; U.N. FOOD & AGRIC. ORG. (FAO), SYMPOSIUM ON AGRICULTURE, TRADE AND FOOD SECURITY, Paper No. 4, at ¶ 27 (Sept. 1999), *available at* http://www.fao.org/docrep/meeting/x2998E.htm [hereinafter FAO Paper No. 4]; *see also* Hathaway & Ingco, *supra* note 34, at 15.

169. FAO Paper No. 4, *supra* note 168, at ¶ 27; WTO, GUIDE TO THE URUGUAY ROUND AGREEMENTS 140, tbl. III.2 (1999). Developing countries produce both tropical agricultural products (such as coffee, cocoa, tea, and palm oil) and temperate agricultural products (such as wheat, milk, fruits and vegetables). Earlier rounds of tariff negotiations had resulted in tariff cuts in tropical agricultural products, but tariff barriers on temperate products, which competed directly with developed country agricultural products, remained quite high. STEVENS, *supra* note 34, at 35.

170. U.N. CONF. ON TRADE & DEV., THE POST-UR TARIFF ENVIRONMENT FOR DEVELOPING COUNTRY EXPORTS, TD/B/COM tbls. 1-3 (1997).

vances.[171] Tariff escalation is problematic from the perspective of developing countries because it relegates them to the production of primary products by excluding them from developed country markets for processed goods.[172]

Many OECD countries adopted complex tariff systems whose lack of transparency made pre- and post-Uruguay Round tariff comparisons more difficult and may complicate future tariff reduction negotiations.[173] For example, many countries adopted non-ad valorem tariffs, which can vary, based on technical factors such as sugar or alcohol content.[174] Some countries adopted complex import arrangements, such as the E.U.'s "entry price" system for fruits and vegetables, which includes seasonal tariffs.[175] Tariff rate quotas, designed to guarantee minimum market access, were likewise plagued by lack of transparency, and were often used to allocate trading opportunities on advantageous terms to historic suppliers (often commercial importers owned by domestic producers) rather than to create new opportunities for developing country exports.[176]

The Agreement's minimum access requirements did not effectively increase market access for developing countries because the amount of access required was very modest and because these provisions merely required WTO members to provide "access opportunities" rather than requiring that the imports actually take place.[177] Moreover, countries were permitted to satisfy the minimum access requirements through the use of existing agreements for the import of commodities on concessionary terms, such as the E.U.'s agreement to purchase sugar from certain countries in the African, Caribbean and Pacific (ACP) regions, and were not required to open up markets to new entrants.[178]

Finally, developed countries restricted market access through the strategic use of the Agreement's special safeguard provision,

171. *See* OECD, THE UR AOA AND PROCESSED AGRICULTURE PRODUCTS (1997) (illustrating the problem of tariff escalation in the processing chain of various agricultural commodities, including coffee, cocoa, oilseeds, vegetables, fruits and nuts).

172. FAO Paper No. 4, *supra* note 168, at ¶ 28.

173. *Id.* at ¶¶ 29, 30.

174. *Id.* at ¶ 29.

175. A. Swinbank, *The Impact of the GATT Agreement on E.U. Fruit and Vegetable Policy,* 20 FOOD POL'Y (1996).

176. FAO Paper No. 4, *supra* note 168, at ¶ 32; *see also* Sturgess, *supra* note 107, at 149.

177. Sturgess, *supra* note 107, at 149.

178. *Id.*; Hathaway & Ingco, *supra* note 34, at 16.

which was designed to allow the imposition of additional duties in the event of an import surge or of particularly low prices compared with 1986-88 levels.[179] The E.U. abused the special safeguard provision by setting trigger prices far above the 1986-88 average world prices used for the conversion of non-tariff barriers into tariffs.[180] For example, the price used for the tariffication of import barriers to sugar was the 1986-88 average world price of 193 European Currency Units (ECU) per ton.[181] However, the special safeguard trigger price was set at the price of 531 ECU paid to ACP countries under the tariff rate quota for sugar.[182] As a result, the E.U. was able to reduce market access by applying additional duties whenever the world market price for sugar was more than 10 percent below the inflated trigger price.[183] Most developing countries do not have access to the special safeguard provision because it is available only to countries that historically engaged in tariffication.[184] By contrast, approximately 80 percent of the tariffed items of the OECD countries are subject to the special safeguard provision, which may so easily be abused.[185]

B. Export Subsidies

The WTO Agreement on Agriculture did not prohibit the use of export subsidies in the agricultural sector, but merely required the reduction of subsidy levels.[186] The Agreement required developed and developing countries to reduce export subsidies by a specified percentage over the Agreement's implementation period.[187] This is in sharp contrast to the Uruguay Round Agreement on Subsidies and Countervailing Measures, which flatly outlawed export subsidies.[188] Consequently, the WTO Agreement on

179. Sturgess, *supra* note 107, at 150; *see* Agreement on Agriculture art. 5.

180. Sturgess, *supra* note 107, at 150.

181. *Id.*

182. *Id.*

183. *See* Agreement on Agriculture art. 5.5(b) (providing that an additional duty may be imposed whenever the difference between the import price and the trigger price is greater than or equal to 10 percent of the trigger price).

184. FAO Paper No. 4, *supra* note 168, at ¶ 34; Agreement on Agriculture art. 5:1.

185. *Id.*

186. *See* Part III(B) of the article for a discussion of the Agreement's export subsidy reduction requirements.

187. *See* Part III(B) of this article for a comparison of the obligations of developed and developing countries.

188. Agreement on Subsidies and Countervailing Measures, art. 3.1(a) (prohibiting ex-

Agriculture, far from promoting liberalized trade in the agricultural sector, merely established permissible levels of market distortion.

The Agreement also exacerbated inequities between developed and developing countries with respect to the availability of export subsidies as a tool of agricultural policy. As explained in Section II of this article, developed countries have historically subsidized agricultural production, whereas developing countries have historically needed to tax the agricultural sector.[189] By permitting past users of export subsidies to maintain these subsidies, subject to certain reduction obligations, while prohibiting the introduction of new subsidies,[190] the Agreement institutionalized the unfair competitive advantage held by developed country producers.[191] Indeed, the practice of providing export subsidies is heavily concentrated in a handful of countries. Only 25 out of 135 countries have the right under the Agreement to subsidize exports, and three exporting countries account for 93 percent of wheat subsidies, 80 percent of beef subsidies, and 94 percent of butter subsidies.[192]

Finally, the Agreement did achieve export subsidy reductions, but OECD countries found other ways to promote agricultural exports. Major food exporters, such as the United States, the E.U.,

port subsidies, but exempting agricultural products covered by the WTO Agreement on Agriculture). Convinced that export subsidies exacerbated international tensions, the GATT founders banned them entirely. *See* GARY C. HUFBAUER & JOANNA SHELTON ERB, SUBSIDIES IN INTERNATIONAL TRADE 5-6 (1984) (explaining why the GATT founders sought to ban export subsidies rather than merely reducing them gradually).

189. *See supra* notes 64-81 and accompanying text for a discussion of agricultural policy in developing countries.

190. *See supra* notes 132-36 and accompanying text for a discussion of the prohibition of new export subsidies.

191. *See* FAO Paper No. 4, *supra* note 168, at ¶ 21. It must be acknowledged that the Agreement does provide special and differential treatment to developing countries by giving them a longer period to comply with subsidy reduction commitments and by exempting them from the obligation to reduce certain marketing subsidies, such as internal and international freight and transport charges. *See* Part III(B) of the article for a discussion of special and differential treatment with respect to export subsidies. However, these concessions are insignificant in light of the fundamental inequality underlying the basic structure of the export subsidy regime. Very few developing countries subsidize agricultural exports. Consequently, developing countries continue to lose market share and export earnings as a result of industrialized countries' ongoing use of export subsidies. 2 U.N. FOOD & AGRIC. ORG. (FAO), MULTILATERAL TRADE NEGOTIATIONS ON AGRICULTURE: A RESOURCE MANUAL 47 (2000).

192. STEVENS, *supra* note 34, at 47.

and Canada, have reduced export subsidies in accordance with their commitments under the WTO Agreement on Agriculture, but they have utilized other devices that are permitted by the Agreement to achieve the goal of export promotion.[193] The United States, for example, has curtailed spending on the Export Enhancement Program,[194] which promotes the export of U.S. agricultural products by paying U.S. exporters the difference between U.S. domestic prices and lower world market prices.[195] However, the U.S. has responded to declines in world commodity prices by providing direct aid to producers that is not contingent on export performance and is therefore permitted by the WTO Agreement on Agriculture.[196] The United States has also promoted exports by providing government credit on concessional terms, and has resisted any effort to reach agreement on minimum interest rates and maximum length of credit terms,[197] as contemplated by Article 10:2 of the WTO Agreement on Agriculture.[198] The absence of binding obligations with respect to export credits is recognized as a major flaw in the Agreement's export subsidy provisions.[199]

C. Domestic Subsidies

The WTO Agreement on Agriculture obligated countries to reduce domestic subsidies. However, as explained below, the Agreement exempted many of the subsidies traditionally utilized by developed countries and thereby achieved minimal domestic subsidy reductions.[200] In addition, as explained in Part III(C) of this article, the Agreement created inequities between developed and developing countries with respect to domestic support by allowing developed countries to use trade-distorting domestic subsidies (subject to reduction obligations) while prohibiting developing countries from utilizing these subsidies beyond de minimis

193. Sturgess, *supra* note 107, at 150, 152; Green, *supra* note 148, at 823.

194. Sturgess, *supra* note 107, at 150.

195. HALLBERG, *supra* note 79, at 203.

196. Sturgess, *supra* note 107, at 150.

197. *Id.*

198. Agreement on Agriculture art. 10:2 (requiring signatories to undertake to work toward the development of an agreement on the use of export credits and export credit guarantees).

199. Moutsatsos, *supra* note 140, at 31.

200. *See* KAREN A. ACKERMAN ET AL., U.S. DEP'T OF AGRIC., AGRICULTURE IN THE WTO 14-20 (Dec. 1998).

levels.[201]

The Agreement required countries to reduce domestic subsidies based on an Aggregate Measure of Support (AMS), a baseline figure that took into account all domestic agricultural subsidies during the 1986-88 base period.[202] Compliance was measured through the calculation of the Current Total AMS, which included only those subsidies deemed to be most trade-distorting (the "amber box" subsidies) and specifically excluded certain direct payments to farmers under production limiting programs (the so-called "blue box" subsidies) and certain de minimis subsidies.[203] The Agreement also exempted from the subsidy reduction obligation certain measures deemed to have minimal or no trade-distorting effects (the "green box" subsidies).[204]

The exclusion of "blue box" subsidies from the Current Total AMS undermined the effectiveness of the Agreement's subsidy reduction obligations by excluding precisely the types of domestic support most utilized by developed countries, namely U.S. deficiency payments and E.U. compensation payments,[205] both of which pay farmers the difference between the actual market price for a given commodity and a higher target price established by the government.[206] In the United States, for example, deficiency payments accounted for over 70 percent of domestic agricultural subsidies in 1990.[207] By including deficiency payments in the calculation of baseline AMS while excluding them from the Current Total

201. *See* STEVENS, *supra* note 34, at 39; *see also infra* notes 300-08 and accompanying text.

202. *See supra* notes 138-48 and accompanying text for a description of the Aggregate Measure of Support.

203. Agreement on Agriculture art. 6:4, 6:5.

204. *See supra* notes 149-52 and accompanying text for a description of these subsidies.

205. McNiel, *supra* note 102, at 57.

206. *Id.* Deficiency payments protect farmers from commodity price fluctuations by paying farmers the difference between the actual market price for a commodity and the higher fixed or target price established by the federal government. HALLBERG, *supra* note 79, at 26-27. Due to the large share of agricultural markets controlled by the U.S., target prices set by the federal government for the purpose of deficiency payments and other domestic subsidy programs have had an enormous impact on world market prices for agricultural commodities. Because U.S. target prices are generally set above world market prices, U.S. producers tend to produce surplus amounts of the subsidized commodities. This, in turn, causes policy-makers to provide export subsidies in order to dispose of the surplus. The dumping of the surplus on world markets drives down world commodity prices. *Id.* at 202-203.

207. Steinle, *supra* note 84, at 356 n.155 (citing U.S. GEN. ACCT. OFF., AGRICULTURE PAYMENTS: NUMBER OF INDIVIDUALS RECEIVING 1990 DEFICIENCY PAYMENTS AND THE AMOUNTS 8 (1992)).

AMS, the Agreement gave the U.S. credit for reducing domestic subsidies above and beyond its obligations under the Agreement.[208] Consequently, it was not necessary for the U.S. to reduce domestic agricultural subsidies in order to comply with the terms of the Agreement.[209]

The "green box" exemption excluded from the Agreement's subsidy reduction obligations a number of measures commonly used by developed countries that may have significant effects on production and trade.[210] These include direct payments to farmers that are decoupled from production, income safety net programs, and crop insurance programs.[211] While these programs are not directly linked to agricultural prices, they do provide farmers with additional revenue, thereby indirectly subsidizing agricultural production.[212] Indeed, perhaps sensing the potential vulnerability of "blue box" exemptions in the next round of agricultural negotiations and perceiving the ease with which "blue box" exemptions can be recharacterized as "green box" exemptions, the United States, in the 1996 Farm Bill, replaced deficiency payments with direct income payments to farmers decoupled from agricultural prices or current production.[213] Subsequently, the United States claimed that these direct income payments are fully compatible with the "green box" exemptions and are not subject to the Agreement's subsidy reduction obligations.[214]

Finally, the "amber box" subsidy reductions required by the Agreement have produced minimal reductions in domestic support because they were based on the 1986–88 period of extremely high domestic subsidies.[215] Because domestic subsidies had de-

208. *See* McNiel, *supra* note 102, at 57.

209. Frederick J. Nelson, *U.S. Ag Policy—Well Below WTO Ceilings on Domestic Support, in* AGRIC. OUTLOOK 26 (Oct. 1997).

210. Moutsatsos, *supra* note 140, at 40.

211. Agreement on Agriculture Annex 2:6-2:8.

212. *See, e.g.*, Steinle, *supra* note 84, at 357 (discussing the effects of income insurance programs on production). Some "green box" measures, such as payments to farmers under soil conservation programs designed to retire marginal lands from production, may serve valuable environmental conservation purposes, and should be encouraged rather than restricted. However, as a general matter, it is important to monitor "green box" exemptions to make sure that they are not abused by industrialized countries to confer advantages on domestic producers at the expense of farmers in developing countries. *See* FAO RESOURCE MANUAL, Vol. I, *supra* note 76, at 110.

213. Moutsatsos, *supra* note 140, at 38.

214. *Id.*

215. *Id.* at 39.

clined relative to the 1986–88 base period by the time the Agreement went into effect in 1995, WTO members have had to reduce AMS by only a few percentage points in order to comply with the Agreement.[216]

D. Conclusion

The WTO Agreement on Agriculture has enabled developed countries to maintain trade-distorting subsidies and import restrictions and has failed to achieve its stated objective of "creating a fair and market-oriented trading system."[217] Indeed, while developed country markets remained closed to developing country producers in the aftermath of the Agreement, the level of agricultural subsidies in OECD countries actually increased from approximately $308 billion in 1986-88 to approximately $352 billion in 1998.[218] As one commentator wryly observed, "[i]n the real world . . . , agricultural production and trade is determined not so much by comparative advantage as by comparative access to subsidies—an area in which food producers in the industrialized world enjoy an unrivalled advantage over those in developing countries."[219]

V. FOOD SECURITY IMPLICATIONS OF THE WTO AGREEMENT ON AGRICULTURE

The United Nations Food and Agriculture Organization estimates that there are 826 million undernourished people worldwide.[220] Approximately 792 million of these people reside in developing countries.[221] As Amartya Sen, winner of the 1998 Nobel Prize in economics, remarked: "[t]he contemporary age is not short of terrible and nasty happenings, but the persistence of extensive hunger in a world of unprecedented prosperity is surely one of the worst."[222] This Section assesses the impact of the WTO Agreement on Agriculture on food security in developing coun-

216. *Id.*
217. Agreement on Agriculture preamble ¶ 2.
218. OECD, AGRICULTURAL POLICIES IN OECD COUNTRIES: MONITORING AND EVALUATION 2000, tbl. III.1 (2000).
219. Watkins, *supra* note 1, at 245.
220. FAO 2000, *supra* note 70, at 32.
221. *Id.*
222. AMARTYA SEN, DEVELOPMENT AS FREEDOM 204 (1999).

tries based on the analytical framework developed by Sen in his pioneering study of poverty and famine.[223]

A. What is Food Security?

For purposes of this article, food security is defined as "physical and economic access by all people at all times to sufficient, safe and nutritious food to maintain a healthy and active life." This definition is consistent with the food security definition adopted at the 1996 World Food Summit in Rome[224] and with the definition utilized by the World Bank in its influential 1986 report on world hunger.[225] Like the World Bank report and the World Food Summit, this article recognizes that poverty is a major cause of food insecurity and that the eradication of poverty is critical to improving access to food.[226] As the World Bank acknowledged:

> The world has ample food. The growth of global food production has been faster than the unprecedented population growth of the past forty years. Prices of cereals on world markets have been falling. Enough food is available so that countries that do not produce all the food they want can import it if they can afford to. Yet many poor countries and hundreds of millions of poor people do not share in this abundance. They suffer from a lack of food security, caused mainly by a lack of purchasing power.[227]

Amartya Sen described food security as a matter of household entitlements, which he defined as the ability to command food, using the legal means available in society.[228] He identified four

223. AMARTYA SEN, POVERTY AND FAMINES: AN ESSAY ON ENTITLEMENT AND DEPRIVATION (1981).

224. The 1996 World Food Summit was a gathering of heads of state or their representatives in Rome at the invitation of the U.N. Food and Agriculture Organization to discuss food security issues. The conference delegates adopted the Rome Declaration on World Food Security, wherein they commit to "implement policies aimed at eradicating poverty and inequality and improving physical and economic access by all, at all times, to sufficient, nutritionally adequate and safe food and its effective utilization." U.N. FOOD & AGRIC. ORG. (FAO), ROME DECLARATION ON WORLD FOOD SECURITY, WORLD FOOD SUMMIT 13-17 (November 1996), *available at* http://www.fao.org/docrep/00s/w3613e/w36163E00.htm.

225. The World Bank defined food security as "access by all people at all times to enough food for an active, healthy life." WORLD BANK, POVERTY AND HUNGER: ISSUES AND OPTIONS FOR FOOD SECURITY IN DEVELOPING COUNTRIES 1 (1986).

226. *See* ROME DECLARATION ON WORLD FOOD SECURITY, *supra* note 224; WORLD BANK, POVERTY AND HUNGER, *supra* note 225, at 1.

227. WORLD BANK, POVERTY AND HUNGER, *supra* note 225, at 1.

228. SEN, POVERTY AND FAMINES, *supra* note 223, at 1-2. Based on Sen's influential study of famine and on the World Bank report on hunger cited herein, it is now widely accepted

types of food-related entitlements: production-based entitlements, labor-based entitlements, trade-based entitlements, and transfer-based entitlements.[229]

1. Production-Based Entitlements

Production-based entitlements refer to the right of individuals and households to consume the food they produce.[230] For many poor people in developing countries, the key determinant of production-based entitlements is access to land or livestock based on ownership rights or other rights, such as tenancy or usufruct rights.[231] Government policies to boost smallholder production will contribute to food security by increasing the amount of food available.[232] Policies to boost food production include input subsidies (such as free or subsidized seeds or fertilizer), research and extension services, access to credit, irrigation projects, land reform, and investment subsidies (such as subsidies to encourage farmers to improve technologies, purchase productive assets or new inputs or increase land holdings).[233]

2. Labor-Based Entitlements

Labor-based entitlements refer to the right of individuals and households to the income they obtain through the sale of their labor.[234] Labor-based entitlements will be influenced by employ-

that lack of access to food rather than inadequate supply is the primary cause of hunger. This shift in emphasis from supply-side analysis of hunger to demand-side analysis has underscored the importance of reducing poverty and inequality in order to promote food security. *See, e.g.*, JOHAN POTTIER, ANTHROPOLOGY OF FOOD: THE SOCIAL DYNAMICS OF FOOD SECURITY 142-43 (1999); GORDON CONWAY, THE DOUBLY GREEN REVOLUTION: FOOD FOR ALL IN THE 21st CENTURY 4-5, 286-87 (1997); YOUNG, *supra* note 11, at 2-7; STEPHEN DEVEREUX, THEORIES OF FAMINE 57-82 (1993); FRANK ELLIS, AGRICULTURAL POLICIES IN DEVELOPING COUNTRIES 302-11, 316 (1992); FAO 2000, *supra* note 70, at What Have We Learned? (concluding that hunger is not the result of insufficient food supplies, but lack of access to food supplies); FAO 2000, *supra* note 70, at The Socio-Economic Impact of Agricultural Modernization (stating that world food security is a matter of insufficient purchasing power of the poor); FAO 2000, *supra* note 70, at State of Food Insecurity in the World 2000 (2000).

229. SEN, POVERTY AND FAMINES, *supra* note 223, at 1-2.

230. *Id.* at 2.

231. STEVENS, *supra* note 34, at 5.

232. *Id.* at 19.

233. *Id.* at 19-22.

234. SEN, POVERTY AND FAMINES, *supra* note 223, at 2.

ment opportunities in both urban and rural areas.[235] Governments can promote labor-based entitlements by creating incentives for the generation of employment opportunities in high-value export production and in small and medium enterprises engaged in manufacturing.[236] Micro-finance to support small entrepreneurs, access to health care and education, and minimum wage legislation to increase the income of poorer individuals and households can also increase labor-based entitlements.[237]

3. Trade-Based Entitlements

Trade-based entitlements refer to the right of households to obtain food through the market.[238] The key variable affecting trade-based entitlements is the price of food relative to household income.[239] Food prices will turn on the local or regional food supply, the degree of market integration, the existence of government price controls, transportation costs, and, if food is imported, global supply and demand.[240]

Governments can promote trade-based entitlements by diversifying exports (thereby reducing vulnerability to poor harvests or to commodity price fluctuations) and by subsidizing export production.[241] Governments can also promote trade-based entitlements by regulating the functioning of private markets or utilizing parastatal marketing boards to market agricultural output.[242] Although parastatal marketing boards have largely been dismantled as a result of structural adjustment programs, parastatal enterprises nevertheless play a role in maintaining buffer stocks in order to ensure access to food in times of emergency and to stabilize

235. STEVENS, *supra* note 34, at 7.

236. *Id.* at 24-25. It is widely accepted that export crop production needs to be balanced with subsistence production in order to promote food security in poor households. *Id.* at 24. Moreover, export-oriented production can exacerbate gender inequality if the proceeds are controlled by men. Export production may not increase the food security of women and children as much as increased income in the hands of women. *Id. See also* GEIER, *supra* note 67, at 35-37. While a discussion of the relationship between food security and the economic and social status of women is beyond the scope of this article, it is important to acknowledge the critical role of women in the production, processing and preparation of food. GEIER, *supra* note 67, at 160-62; *see also* YOUNG, *supra* note 11, at 88-109.

237. *Id.* at 25.

238. SEN, POVERTY AND FAMINES, *supra* note 223, at 2.

239. STEVENS, *supra* note 34, at 6.

240. *Id.*

241. *See* YOUNG, *supra* note 11, at 41-42; COOTE, *supra* note 8, at 115.

242. *See* YOUNG, *supra* note 11, at 22.

food prices.[243] Food shortfalls can also be addressed by maintaining buffer funds to import foods in time of food shortage rather than maintaining a physical stock of food.[244]

4. Transfer-Based Entitlements

Transfer-based entitlements refer to food donated by others, such as family, friends, government programs and non-governmental organizations.[245] Trade policies that result in a reduction of food aid or a loss of revenue to fund government food programs will affect transfer-based entitlements.[246] Governments can promote transfer-based entitlements by providing both targeted and non-targeted transfers and safety nets.[247] Non-targeted transfers include generalized food price subsidies available to all regardless of income.[248] Targeted transfers, such as food stamps, direct provision of food, or labor-intensive public works programs, are designed to provide food or income directly to the most vulnerable groups.[249] Safety nets are designed to provide insurance in the event that vulnerable groups experience deterioration in any of their entitlements.[250]

B. Framework for Evaluating the Food Security Implications of International Trade Agreements

Since agricultural trade policy is negotiated between states, it is necessary to translate the concept of individual or household entitlements to state entitlements.[251] The food security of a state can be viewed as a function of its production-based entitlements, its trade-based entitlements and its transfer-based entitlements.[252] A state's production-based entitlements reflect the food that can be produced domestically.[253] Its trade-based entitlements reflect its ability to earn foreign exchange to purchase imported food.[254]

243. *Id.* at 22-23.
244. *Id.* at 24.
245. STEVENS, *supra* note 34, at 8.
246. *Id.* at 32.
247. *Id.*
248. *Id.*
249. *Id.* at 25-26.
250. *Id.* at 25.
251. *Id.* at 18.
252. *Id.*
253. *Id.*

ability to earn foreign exchange to purchase imported food.[254] Its transfer-based entitlements reflect the food the state can obtain through food aid or through imports obtained commercially or semi-commercially through financial assistance programs.[255]

Diversification of entitlements is an important tool through which states can promote food security.[256] The most food insecure states are those that combine inadequate domestic production with heavy reliance on a small number of export commodities for foreign exchange revenues.[257] These countries are highly vulnerable to commodity price fluctuations that affect either exports or imports.[258] For example, poor harvests or a collapse in the world market prices for key exports (such as coffee) would produce a sharp decline in export revenues needed to purchase imported foodstuffs.[259] Likewise, increases in the world market price of imported foods would have a negative impact on the country's ability to purchase food on global markets.[260] Given the unreliability of food aid (transfer-based entitlements) as a means of securing an adequate food supply, it is imperative that food-insecure states be given maximum flexibility to promote both production-based entitlements and trade-based entitlements.[261]

Before discussing the specific impact of the Uruguay Round reforms on agricultural policy and food security in developing countries, it is useful to consider how trade liberalization in general may affect the policies adopted by developing countries to promote food security. This section highlights some of the key ef-

254. *Id.*

255. *See id.*

256. *See* JEAN DREEZE & AMARTYA SEN, HUNGER AND PUBLIC ACTION 76-77, 168-70 (1989), *reprinted in* THE AMARTYA SEN AND JEAN DREEZE OMNIBUS (1999).

257. STEVENS, *supra* note 34, at 14.

258. *Id.* at 16. *See generally* COOTE, *supra* note 8, at 3-11 (discussing the dangers of reliance on a small number of primary commodities for export revenues).

259. YOUNG, *supra* note 11, at 41.

260. *Id.*

261. *See* STEVENS, *supra* note 34, at 14. Diversification of agricultural exports in order to decrease vulnerability to commodity price fluctuations is high on the agenda of many developing countries. Indeed, a concept that has gained increasing acceptance among food security experts is the notion of food self-reliance. Food self-reliance must be distinguished from food self-sufficiency. While food self-sufficiency implies reliance on domestic food production to ensure food security, food self-reliance refers to the maintenance of both production-based entitlements and trade-based entitlements to satisfy domestic food needs. *See* FAO RESOURCE MANUAL, Vol. I, *supra* note 76, at 36-37. This article advocates food self-reliance rather than food self-sufficiency as the means of achieving food security.

fects in order to lay the groundwork for the subsequent discussion of the food security implications of the WTO Agreement on Agriculture.

1. Tariffs

Trade liberalization can affect agricultural policy in developing countries and impinge on food security in several ways. First, to the extent that trade liberalization results in the lowering of tariff barriers in developing countries, food imports will become cheaper relative to domestic production.[262] This can reduce production-based entitlements by creating disincentives to domestic food production and encouraging reliance on imported food.[263] Tariff cuts can also adversely affect production-based entitlements by reducing the government revenue available to support domestic subsidies, such as subsidized or free inputs, research and extension services, access to credit, irrigation projects and investments subsidies.[264] Finally, tariff reductions can affect transfer-based entitlements by reducing the ability of governments to finance food-price subsidies, targeted feeding programs, food stamps, labor-intensive public works programs and income safety nets.[265]

2. Domestic subsidies

Trade liberalization frequently requires the reduction of domestic agricultural subsidies in developing countries.[266] Indeed, both the WTO Agreement on Agriculture and structural adjustment programs mandated by the World Bank and the IMF require lowering of agricultural subsidies.[267] As explained in the preceding section, reduction of domestic subsidies can adversely affect production-based entitlements and impinge on food security by limiting the tools available to developing countries to encourage food production, such as input subsidies, research and extension services and irrigation projects. The obligation to reduce agricultural subsidies may also adversely affect transfer-based entitlements,

262. *Id.* at 30.
263. *See* YOUNG, *supra* note 11, at 46.
264. *See* STEVENS, *supra* note 34, at 32.
265. *See id.*
266. *Id.* at 30.
267. *Id.*

such as food-price subsidies, targeted transfer programs and income safety nets.

3. Import Barriers

One objective of trade liberalization is to lower import barriers. To the extent that trade liberalization results in the reduction of tariff and non-tariff import barriers in developed countries, demand for developing country products should increase, thereby increasing the trade-based entitlements of developing countries.[268] However, not all developing countries will benefit equally from this change. Countries that have preferential access to E.U. markets, for example, may find their exports threatened by competition from other suppliers.[269] Furthermore, as explained in the section on tariffs, the lowering or elimination of tariff and non-tariff import barriers by developing countries can encourage reliance on cheap imported food, thereby undercutting domestic food production and undermining production-based entitlements.[270]

4. Export Subsidies

Trade liberalization aims to reduce trade-distorting export subsidies. To the extent that developed countries reduce export subsidies, developing country products will become more competitive on both domestic and world markets, thereby boosting the production of both cash crops and subsistence crops. However, countries that rely on imports for domestic food supply may experience price increases and greater food insecurity.[271]

268. *Id.*

269. *Id.* For example, under successive Lome Conventions, developing countries in Africa, the Caribbean and the Pacific (ACP) receive preferential treatment in E.U. markets. Joseph McMahon, *International Agricultural Trade Reform and Developing Countries: The Case of the European Community*, 47 INT'L COMP. L.Q. 632, 633-35 (1998). Reductions in E.U. tariffs on tropical products from competitor countries will erode these preferences, resulting in significant revenue losses to ACP countries. *Id.* at 642. At the WTO Ministerial meeting in Qatar, the Ministerial chair announced that ACP countries had been granted a waiver of WTO rules in order to protect their preferential access to E.U. markets. Gould, *supra* note 156, at 1.

270. *See* YOUNG, *supra* note 11, at 46.

271. *See id.* at 30, 33.

C. How the WTO Agreement on Agriculture Affects Food Security

The WTO Agreement on Agriculture affects food security in developing countries in two distinct ways. First, the Agreement increases food insecurity by exacerbating rural poverty and inequality. Second, the Agreement hampers the ability of developing countries to adopt measures to promote food security. This section begins with a brief summary of empirical studies on the effects of trade liberalization on food security in developing countries and then examines how the WTO Agreement on Agriculture restricts the policy options available to developing countries to address food insecurity.

1. Exacerbation of Rural Poverty and Inequality

Several empirical studies by non-governmental organizations and United Nations agencies have attempted to assess the actual impact of agricultural trade liberalization on food security in developing countries.[272] A 1999 study by the U.N. Food and Agriculture Organization (FAO) on the impact of the WTO Agreement on Agriculture in 16 developing countries expressed concern that the Agreement on Agriculture, like the market-liberalizing structural adjustment programs that preceded it, would adversely affect food security in developing countries by exacerbating rural poverty and inequality.[273] The FAO study found that the Agreement resulted in an increase in food imports and an accompany-

272. For a summary of these studies, *see* John Madeley, *Trade and Hunger: An Overview of Case Studies on the Impact of Trade Liberalization on Food Security*, *at* http://www.forumsyd.se (Oct. 2000).

273. U.N. FOOD & AGRIC. ORG. (FAO), FAO SYMPOSIUM ON AGRICULTURE, TRADE AND FOOD SECURITY, Paper No. 3: Experience with the Implementation of the Uruguay Round Agreement on Agriculture: Developing Country Experiences, at ¶ 18 (Sept. 1999), *available at* http://www.fao.org/DOCREP/meeting/x3065E.htm [hereinafter FAO Paper No. 3]. The countries studied by the FAO were Bangladesh, Botswana, Brazil, Egypt, Fiji, Guyana, India, Jamaica, Kenya, Morocco, Pakistan, Peru, Senegal, Sri Lanka, Tanzania, and Thailand. *See also* U.N. FOOD & AGRIC. ORG. (FAO), AGRICULTURE, TRADE AND FOOD: COUNTRY CASE STUDIES, vol. II, ch. 8, *Kenya*, at 1, *at* http://www.fao.org/DOCREP/003/x8731e/x8731e00.htm; OXFAM, TRADE LIBERALISATION AS A THREAT TO LIVELIHOODS: THE CORN SECTOR IN THE PHILIPPINES 1-2, 11 (Dec. 1996), *at* http://www.oxfam.org.uk/policy/research/corn.htm; JOHN MAKAMURE ET AL., LIBERALISATION OF AGRICULTURAL MARKETS 34, 37 (2001), *available at* http://www.saprin.org/zimbabwe/ research/zim_agriculture.pdf.

ing decline in food production.[274] These increases in food imports, including surges in meat and dairy products, threatened key agricultural sectors in developing countries that were important for economic development, employment, food supply and poverty alleviation.[275] The FAO reported that agricultural trade liberalization had resulted in a concentration of landholding in a wide cross-section of countries.[276] While large, export-oriented agricultural enterprises reaped the benefits of trade liberalization, small farmers frequently lost title to their plots of land.[277] In the absence of social safety nets, rural unemployment grew and poverty increased.[278]

These conclusions are supported by twenty-seven case studies that document the effects in thirty-nine developing countries of agricultural trade liberalization resulting from structural adjustment policies, regional trade agreements and the WTO Agreement on Agriculture.[279] The case studies confirmed that liberalized trade in agricultural products produced a flood of cheap food imports that depressed food prices and threatened the livelihoods of small producers in developing countries.[280] At the same time, government cuts in agricultural input subsidies increased the price of farm inputs.[281] The resulting price squeeze harmed small

274. *Id.* at ¶¶ 15, 42, 49, 57, 77, 82; *see also* Hezron Omare Nyangito, *Kenya's State of Agricultural Trade Reform in the Framework of World Trade Organization* 6, 8, *at* http://www.aerafrica.org/project/ai.asp (last visited March 7, 2002) (explaining that subsidized food imports from developed countries in the aftermath of Kenya's implementation of the WTO Agreement on Agriculture have resulted in a decline in domestic food production).

275. *Id.* at para. 19; *see id.* at ¶¶ 15, 42, 49, 57, 77 , 82; *see also* U.N. FOOD & AGRIC. ORG., AGRICULTURE, TRADE AND FOOD: COUNTRY CASE STUDIES, *supra* note 273, at 1 (describing the increase in imports of foodstuffs, particularly maize, rice, wheat, sugar and dairy products, in the aftermath of free market agricultural reforms in Kenya); EUROSTEP, DUMPING IN JAMAICA: DAIRY FARMING UNDERMINED BY SUBSIDISED E.U. EXPORTS 1 (1999), *available at* http://www.oneworld.org/eurostep/jamaicaad.htm (describing how cheap dairy imports from the European Union are displacing Jamaican dairy farmers); Christopher Mumpimpila et al., *Case Study for Zambia, in* DAVID REED, STRUCTURAL ADJUSTMENT, THE ENVIRONMENT AND SUSTAINABLE DEVELOPMENT (David Reed ed., 1996) (describing how trade liberalization in Zambia pursuant to structural adjustment programs resulted in a flood of cheap imports with which local agriculture could not compete).

276. *Id.* at ¶ 18.

277. *Id.*

278. *Id.*

279. Madeley, *supra* note 272, at 7-13.

280. *Id.* at 8, 17-18, 21, 25-26, 43, 45, 52, 62, 71, 77; *see also* Nyangito, *supra* note 274, at 8.

281. *Id.* at 8, 16-17, 25-26, 28-29, 34, 36-37; *see also* COOTE, *supra* note 8, at 13; Makamure, *supra* note 273, at 19, 37; Paul Glewwe & Dennis de Tray, *The Poor in Latin America During*

farmers, who were forced to pay more for agricultural inputs while receiving less for their output.[282]

Trade liberalization also led to increasing emphasis in developing countries on export production.[283] As more land and resources were devoted to export crops, domestic food production declined and food insecurity grew.[284] However, due to declining world prices for many agricultural commodities, small farmers in developing countries did not necessarily receive better prices for export commodities.[285]

In sum, the studies found that trade liberalization produced winners and losers. The winners are generally large enterprises, such as transnational corporations and domestic large-scale farming operations.[286] The losers appear to be poor farmers and rural laborers, whose livelihoods were undermined by falling commodity prices and by the loss of rural employment.[287]

2. Restriction of Developing Country Policy Options to Promote Food Security

The WTO Agreement on Agriculture restricts the policy options available to developing countries to promote food security. As detailed earlier in this article, the Agreement was negotiated primarily between the U.S. and the E.U., and reflects the interests and priorities of these parties. The Agreement enables developed countries to continue to subsidize and protect domestic producers while requiring developing countries to open up their markets to foreign competition. This section describes how the Agreement's provisions may impinge on food security in developing countries.

a. Market Access

As explained in Section IV of this article, the WTO Agreement

Adjustment: A Case Study of Peru, 40 ECON. DEV. & CULTURAL CHANGE 27, 38 (1991).

282. *Id.* at 8.

283. *Id.* at 8, 26, 34, 65.

284. *Id.* at 8-9, 28-29.

285. *Id.* at 9.

286. *Id.* at 8, 15, 34-35, 72; *see also* T. S. Jayne et al., *Success and Challenges of Food Market Reform: Experiences From Kenya, Mozambique, Zambia and Zimbabwe* 8, 32 (1999), *at* http://www.aec.msu.edu/agecon/fs2/papers/idwp72.pdf.

287. *Id.* at 9, 16, 27, 50, 58, 69, 72; *see also* OXFAM, *supra* note 273, at 11 (estimating that market liberalization in the Philippines will undermine the livelihoods of 2.5 million poor farmers, as cheap, subsidized corn from the U.S. depresses corn prices).

on Agriculture did not produce market liberalization in OECD countries. Developed countries were able to evade the Agreement's market access obligations through dirty tariffication, selective tariff reduction, strategic use of the Agreement's Article 5 safeguard provision and weaknesses in the minimum market access requirements.[288] Consequently, the WTO Agreement on Agriculture did not open up developed country markets to developing country producers.

While some developing countries also engaged in dirty tariffication, most developing countries did not engage in tariffication at all.[289] Many developing countries were forced to eliminate non-tariff barriers prior to the WTO Agreement on Agriculture as a result of structural adjustment programs mandated by the World Bank and the IMF.[290] Instead of converting non-tariff barriers to tariffs, most developing countries declared bound tariffs, which were then subject to reduction commitments in accordance with the terms of their individual country schedules.[291] Many of these tariffs were set at levels far higher than the current applied tariffs,[292] and are therefore unlikely to constrain agricultural policy under ordinary circumstances.[293]

However, limitations on the use of the Agreement's Article 5 safeguard provision may hamper the ability of developing countries to protect domestic producers in the event of sudden import surges or unusually low import prices. As explained in Part V(C)(1) of this article, developing countries have experienced increases in food imports, including surges in meat and dairy imports, and corresponding declines in domestic food production in the aftermath of the Agreement.[294] The availability of cheap im-

288. *See supra* notes 160-85 and accompanying text for a discussion of developed countries' implementation of the market access requirements.

289. Hathaway & Ingco, *supra* note 34, at 11.

290. FAO Paper No. 3, *supra* note 273, at para. 5.

291. Hathaway & Ingco, *supra* note 34, at 11.

292. STEVENS, *supra* note 34, at 40. FAO studies have shown that even though developing country tariffs were often bound at very high levels, the actual tariffs applied by developing countries were considerably lower for several reasons. First, commitments with international financial institutions often precluded the application of higher tariffs. Second, developing countries feared damaging trade relations with trading partners that provided preferential market access and foreign aid. Third, developing countries refrained from applying higher tariffs because they felt compelled to maintain low agricultural prices, especially for basic foods. FAO Paper No. 3, *supra* note 273, at para. 6.

293. STEVENS, *supra* note 34, at 40.

294. *See supra* notes 274-75 and accompanying text for a discussion of surges in imports

ported food can reduce production-based entitlements by creating disincentives to domestic food production and encouraging reliance on food imports. Because most developing countries did not engage in tariffication, they are not permitted to invoke the Agreement's Article 5 safeguard provision, which permits the imposition of additional duties in the event of import surges or particularly low import prices.[295] While some countries have proposed elimination of the safeguard provision in order to combat developed country abuses and in order to create parity between developed and developing countries, others have proposed expansion of the provision to cover developing countries and restriction of the provision to policies designed to promote food security.[296]

Finally, the onerous tariff reduction commitments adopted by certain developing countries may preclude the use of tariffs to protect particularly sensitive agricultural products, such as food staples, or to protect domestic producers from unfair competition from subsidized developed country farmers. While most developed countries adopted an aggregate 36 percent tariff reduction commitment and engaged in selective tariff reduction to protect domestic producers, many developing countries agreed to implement a uniform rate of binding and reduction for all agricultural products.[297] As a result, these countries have very little flexibility to provide higher protection for basic foodstuffs and other sensitive agricultural products.[298] In addition, some developing countries bound their tariffs at very low levels and therefore have even fewer defenses against import surges or market price fluctuations.[299]

b. Export Subsidies

As detailed in Section IV above, the WTO Agreement on Agriculture institutionalized the existing inequities between devel-

in the aftermath of the WTO Agreement on Agriculture.

295. FAO Paper No. 4, *supra* note 168, at ¶ 34; *see also* Hathaway & Ingco, *supra* note 34, at 15; Agreement on Agriculture art. 5:1.

296. FAO Paper No. 4, *supra* note 168, at ¶ 35. Such an amendment might also specify with precision the requirements for setting trigger prices in order to address the Article 5 safeguard provision abuses discussed in Part IV(A) of this article.

297. *Id.* at ¶ 20.

298. *Id.*

299. *Id.*

oped and developing countries with respect to the availability of export subsidies as a tool of agricultural policy. By permitting past users of export subsidies to maintain these subsidies, subject to certain reduction obligations, while prohibiting the introduction of new subsidies, the Agreement perpetuated the unfair competitive advantage held by developed country producers.[300]

The Agreement's prohibition of new export subsidies deprives developing countries of an important tool of agricultural policy that may be used to enhance export revenues and create employment opportunities in the agro-export sector. In so doing, the Agreement hamstrings developing countries' use of trade-based entitlements and labor-based entitlements to promote food security while subjecting them to an influx of subsidized imports that may erode production-based entitlements by displacing domestic food production.

c. Domestic Subsidies

The WTO Agreement on Agriculture exacerbated inequities between developed and developing countries with respect to the use of trade-distorting "amber box" subsidies by permitting developed countries to use these subsidies (subject to reduction commitments) while restricting their use by developing countries.[301] Most developing countries do not have domestic subsidy reduction obligations under the Agreement because very few developing countries provided significant domestic agricultural subsidies during the 1986-88 base period.[302] However, the Agreement precludes developing countries from adopting "amber box" support measures in the future that exceed de minimis levels of support.[303] For developing countries, the Agreement defines de minimis levels of support as subsidies that do not exceed 10 percent of the total value of agricultural production and 10 percent of the support

300. *See supra* notes 125-37 and 186-99 and accompanying text for a discussion of export subsidy reduction obligations. While the export subsidy reductions required by the Agreement are significant, they still leave sizeable export subsidies in place. Total developed country export subsidies during the base period, from which reductions are calculated, were approximately $19 billion. The highest subsidies were allocated to cereals, dairy products and meat. STEVENS, *supra* note 34, at 38.

301. *See* FAO Paper No. 4, *supra* note 168, at ¶ 9.

302. *Id.* at ¶ 10.

303. Agreement on Agriculture art. 7:2(b).

provided to a particular agricultural product.[304] Developing countries may only use "amber box" subsidies in excess of de minimis levels if they fall within the "rural development" exemption (hereinafter the Special and Differential Treatment box or "SDT box") of the Agreement, which permits investment subsidies generally available to agriculture in developing countries, input subsidies generally available to low-income or resource-poor producers, and domestic support to encourage diversification from growing illicit narcotic crops.[305]

The case of India illustrates why the restrictions on "amber box" subsidies may impose severe constraints on agricultural policy in developing countries, notwithstanding the availability of the "rural development" or "SDT box" exemptions. In India, as in many developing countries, subsidies for the production of basic foodstuffs are very close to the de minimis levels prescribed by the Agreement.[306] Indian input subsidies constitute 7.5 percent of the total value of agricultural production[307] and are not covered by the "SDT box" because they are not restricted to low-income or resource-poor farmers.[308] Consequently, the Agreement's provisions may constrain the ability of India and similarly situated developing countries to support basic food production through the use of sector-wide agricultural instruments, such as input subsidies available to all farmers regardless of income.[309]

Furthermore, the fact that the baseline AMS is expressed in fixed prices poses particular problems for developing countries.[310]

304. *Id.* art. 6:4.

305. *Id.* art. 6:2.

306. FAO Paper No. 4, *supra* note 168, at ¶ 15.

307. STEVENS, *supra* note 34, at 40.

308. FAO Paper No. 4, *supra* note 168, at ¶ 15.

309. *Id.* The ability to utilize sector-wide subsidies rather than subsidies targeted to low-income or resource-poor farmers may be important to developing countries for several reasons. First, targeted programs are difficult to administer in countries where information on income and wealth is difficult to obtain. Second, targeted programs can deter subsidy recipients from increasing their earnings for fear of losing the means-tested support. Third, targeted subsidies can have the effect of stigmatizing those identified as poor. Fourth, targeted programs entail significant administrative costs and bureaucratic delay, and can fuel corruption by giving administrators the power to bestow benefits on those willing to pay bribes. Finally, targeted programs may not be politically sustainable because the beneficiaries are weak politically. Consequently, it is important that developing countries have the flexibility to provide sector-wide subsidies to promote agricultural production to the extent they deem such subsidies appropriate. *See* SEN, *supra* note 222, at 135-36.

310. FAO Paper No. 4, *supra* note 168, at ¶ 16.

Because many developing countries have experienced high levels of inflation and exchange rate depreciation, AMS levels have increased on paper despite the fact that actual levels of agricultural support have not increased.[311]

Finally, the inequity with respect to "amber box" subsidies is compounded by the fact that the Agreement exempts from its subsidy reduction obligations many of the subsidies traditionally utilized by developed countries.[312] The so-called "blue box" and "green box" exemptions to the domestic support provisions impinge on food security in developing countries by encouraging overproduction in developed countries, which depresses world prices and creates disincentives to domestic production.[313] As explained in Section IV of this article, the "blue box" exemptions permit the U.S. and the E.U. to promote exports by paying farmers the difference between a government target price for agricultural commodities and the corresponding market price. The "green box" exemption enables developed countries to evade subsidy reduction obligations by transforming prohibited subsidies into direct payments to farmers decoupled from production. Because these provisions are used primarily by developed countries, they have enabled developed countries to evade domestic subsidy reduction obligations without conferring significant benefits to developing countries.[314] Consequently, reform or outright elimination of these exemptions is a critical concern of developing countries in the renegotiation of the Agreement.[315]

d. Peace Clause

The Agreement's "peace clause" precludes the imposition of countervailing duties or the initiation of WTO dispute settlement proceedings under certain provisions of the 1994 GATT and the Agreement on Subsidies and Countervailing Duties to the extent

311. *Id.* at ¶ 16. Some developing countries have addressed this problem by reporting both Base Total AMS and Current Total AMS in U.S. dollars. However, the Agreement does not specifically authorize this procedure, and it has been subject to question. *See id.* ¶ 16 n.12.

312. *See supra* notes 202-14 and accompanying text for a discussion of this issue.

313. *Id.*

314. *See* FAO Paper No. 4, *supra* note 168, at ¶ 18, tbl. 3 (explaining that developing country "green box" expenditures are insignificant compared with those of developed countries).

315. *See* FAO Paper No. 4, *supra* note 168, at ¶ 18.

that domestic and export subsidies comply with the terms of the WTO Agreement on Agriculture.[316] The peace clause remains in effect through the end of 2003.[317] This provision renders non-actionable until 2004 the trade-distorting export subsidies and domestic support measures maintained by the U.S. and the E.U., and thereby deprives developing countries of any recourse to address the unfair competitive advantage conferred by the Agreement on developed countries.

VI. ESSENTIAL REFORMS TO PROMOTE FAIRNESS AND PROTECT FOOD SECURITY

The WTO Agreement on Agriculture adversely affects food security in developing countries by increasing poverty and inequality and by restricting the tools available to developing country governments to promote food security. This section discusses the reforms of the WTO Agreement on Agriculture that are necessary to enable developing countries to become food secure. These reforms are designed to address the flaws in the WTO Agreement on Agriculture detailed in Parts IV(B) and IV(C) of this article. Recognizing the historic differences in agricultural policy between developed and developing countries and the disadvantages conferred on developing country producers by the global trading system in general and by the WTO Agreement on Agriculture in particular, this section differentiates between reforms directed at developing countries and those directed at developed countries.

A. Market Access

Substantial tariff reduction will certainly be on the agenda as the WTO Agreement on Agriculture is renegotiated. The proposals discussed below are designed to ensure that tariff reductions are targeted to the achievement of greater access by developing country producers to developed country markets and that tariff reductions do not impair the ability of developing countries to utilize tariffs for the promotion of food security.

316. Agreement on Agriculture art. 13.
317. *Id.* art. 1(f).

1. Developed Countries

Greater access to developed country markets should be a chief priority in the new round of agricultural trade negotiations in order to increase the trade-based entitlements of developing countries and to address developed countries' evasion of the Agreement on Agriculture's market access requirements. Greater market access can be achieved through further reduction of developed country tariffs in order to address dirty tariffication. Market access can also be improved by applying tariff reductions on a product-by-product basis rather than industry-wide averages in order to avoid selective tariff reduction, by eliminating tariff escalation on products of export interest to developing countries, and by requiring greater transparency in tariffs in order to avoid abuses. The Agreement's Article 5 safeguard provisions, which have been abused by developed countries and are generally unavailable to developing countries, should be made available exclusively to developing countries, and should be reformed to specify the calculation of the trigger price. Finally, the Agreement's minimum market access requirements should be expanded and clarified in order to ensure that trading opportunities are made available for developing country producers (rather than commercial exporters owned by developed country producers) and to compensate countries whose preferential access to developed country markets will be eroded by trade liberalization.

2. Developing Countries

The WTO Agreement on Agriculture should give developing countries maximum flexibility in the implementation of tariff reductions in recognition of the fact that developing countries frequently rely on tariff revenues to fund measures to boost production-based entitlements and transfer-based entitlements. For example, as explained in Part V(A) of this article, developing countries frequently rely on tariff revenues to finance programs to promote domestic food production, such as subsidized or free inputs, research and extension services, irrigation projects, and investment subsidies. Tariff revenues may also be used to finance food price subsidies, targeted feeding programs and income safety nets. Consequently, the maintenance of tariff revenues is critical to the ability of developing countries to promote food security.

Furthermore, it is critical that any additional tariff reduction in developing countries not occur until there have been significant reductions in export subsidies and domestic subsidies in developed countries. To do otherwise would thwart the ability of developing countries to use tariffs to prevent the displacement of domestic food production by cheap, subsidized food imports.

The Agreement should also exempt developing countries from tariff reduction obligations for particularly sensitive agricultural commodities, such as food staples. This exemption would enable developing countries to promote food security by encouraging domestic food production, reducing dependence on world markets, and encouraging diversification of food supply. Under the proposed exemption, countries that agreed to uniform tariff bindings and reductions for all agricultural commodities would be permitted to protect particularly sensitive agricultural products, such as food staples, from foreign subsidized competitors. Developing countries that bound their tariffs at very low levels would likewise be permitted to readjust their tariff bindings to provide higher protection for particularly sensitive agricultural commodities.

Finally, the Agreement's Article 5 safeguard provisions should be made available to all developing countries (regardless of whether or not they engaged in tariffication) in order to enable them to increase tariff protection when import surges or particularly low import prices threaten domestic production. As discussed in the preceding subsection, the trigger price calculation mechanism should be specified in order to avoid abuse of this provision.

B. Export Subsidies

Unlike the Uruguay Round Agreement on Subsidies and Countervailing Measures, which expressly prohibited export subsidies, the WTO Agreement on Agriculture permitted past users of export subsidies (primarily developed countries) to maintain these subsidies (subject to reduction obligations) while prohibiting the introduction of new export subsidies. In so doing, the Agreement institutionalized the ruinous competition between highly subsidized developed country agricultural producers and their counterparts in developing countries.

1. Developed Countries

The WTO Agreement on Agriculture should flatly prohibit developed countries from subsidizing exports. The Agreement should also contain a broad prohibition on measures designed to circumvent this prohibition, such as direct aid to producers that is not contingent on export performance. Furthermore, as contemplated by Article 10:2 of the Agreement, the renegotiated Agreement should contain binding obligations with respect to minimum interest rates and maximum credit terms, in order to prevent developed countries from promoting exports by providing government credit on concessional terms. Finally, the Agreement should eliminate the Article 13 "peace clause" that currently prevents developing countries from imposing countervailing duties or initiating WTO dispute settlement proceedings to challenge the trade-distorting measures adopted by developed countries to promote agricultural exports.

2. Developing Countries

In accordance with the principle of special and differential treatment, developing countries should be permitted some latitude to use export subsidies to nurture agro-export industries, thereby generating export revenues and creating employment opportunities. Indeed, in light of the unfair competitive advantage obtained by developed countries through the use of export subsidies and of various measures to circumvent the Agreement's limitations on export subsidies, it is imperative that developing countries not be deprived of this important policy option.

The problem with this proposal is that few developing countries have the resources to subsidize agricultural exports. Indeed, this proposal may benefit wealthier developing countries (such as certain developing country members of the Cairns group) at the expense of developing countries that cannot afford export subsidies. One solution to this dilemma may be to permit subsidies only when they can be justified by food security concerns, such as the need to diversify agricultural production in order to reduce dependence on one or two export commodities. This solution would draw a distinction between export subsidies designed to distort world markets in order to increase the market share of established agricultural producers and export subsidies designed to nurture infant agro-export industries in order to reduce overall vulnerability to world market commodity price fluctuations.

Finally, since the elimination of export subsidies in developed countries may increase agricultural prices, the renegotiated Agreement should include a binding commitment by industrialized countries to provide financial assistance to least-developed and to net food-importing developing countries to compensate for higher world market prices. This proposal represents a codification and elaboration of the commitment to assist the least developed and net food-importing developing countries made by WTO member nations during the Uruguay Round negotiations.[318]

C. Domestic Subsidies

The WTO Agreement on Agriculture obligated countries to reduce domestic subsidies, but excluded the very types of subsidies most commonly employed by developed countries. Consequently, the Agreement reinforced the competitive advantage of developed country agricultural producers relative to farmers in developing countries. This section sets forth alternatives to address this inequity and to promote food security in developing countries.

1. Developed Countries

A top priority in the renegotiation of the Agreement should be to re-characterize the exempted "blue box" and "green box" subsidies utilized by developed countries as trade-distorting "amber box" subsidies and to require that these subsidies be reduced. First, as detailed in Section IV of the article, "blue box" subsidies (such as U.S. deficiency payments and E.U. compensation payments, both of which involve direct payments to farmers based on production) directly subsidize agricultural production, and should be included in the category of trade-distorting "amber box" measures. Second, the exempted "green box" subsidies, such as payments to farmers decoupled from production, income safety net programs and crop insurance programs, indirectly subsidize agricultural production by increasing farmer revenues. Given the relative ease with which "blue box" subsidies have been

318. *See* Ministerial Decision on Measures Concerning the Possible Negative Effects of the Reform Program on Least-Developed and Net Food-Importing Developing Countries, April 15, 1994, *at* http://docsonline.wto.org:80/DDFDocuments/v/UR/FA/35-dag.doc

transformed into "green box" subsidies, it is imperative that the renegotiated Agreement develop a more precise definition of non-trade-distorting "green box" measures or, in the alternative, place a cap or ceiling on these "green box" measures. Finally, the Agreement should require sharp AMS reductions in light of the fact that the original requirements achieved negligible domestic subsidy reductions as a result of the exemptions and of the fact that the 1986–88 base period was one of extremely high domestic subsidies.

2. Developing Countries

The renegotiated Agreement on Agriculture should recognize the pivotal importance of domestic subsidies to food security in developing countries, and should expand the "Special and Differential Treatment" or "SDT box" discussed in Part V(C) of this article to a "food security box." The "food security box" should permit all subsidies designed to increase domestic food production (such as subsidized seed and fertilizer) regardless of whether the programs are restricted to low-income or resource-poor farmers and without limitation to de minimis levels. The "food security box" should also include food price subsidies, direct provision of food, and income safety nets.

With respect to domestic subsidies that are not included in the "food security box," developing countries should be allowed to adjust their calculations of AMS levels to account for inflation and should be permitted to use export taxation and price controls (negative AMS) to offset domestic subsidies. Similarly, developing countries should exclude from AMS (or include in the food security box) all costs related to the maintenance of food stockpiles or food security funds to protect against food shortfalls.

VII. CONCLUSION

The Doha WTO Ministerial Declaration reaffirmed the Agreement on Agriculture's long-term objective to establish a fair and market-oriented trading system.[319] Significantly, the Doha Declaration also acknowledged the importance of taking into account the development needs of non-industrialized nations, including

319. Doha WTO Ministerial Declaration, *supra* note 4, at ¶ 13.

food security and rural development, during the next round of agricultural trade negotiations.[320] In order to achieve these objectives, it is necessary to remedy the asymmetries in the Agreement that institutionalize the subsidies and protections accorded industrialized country agricultural producers while requiring market openness in developing countries. It is also imperative to recognize the underlying inequities in the global trading system that create food insecurity and to craft multilateral trading rules that enable developing countries to utilize a wide array of tools to ensure access by all people at all times to sufficient, safe and nutritious food. The proposals set forth in this article are designed to ensure that the multilateral trading system fulfills the aspirations articulated at the Doha Ministerial meeting—the extension of increased opportunities and welfare gains to *all* countries.

320. *Id.*